

Imposed from Above: Post-Conflict Internationalized Constitutions and Local Ownership as
part of State-Building

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Chapter One:

An Introduction to Internationalization

This May 2021, 日本国憲法, in English, the Constitution of Japan, will celebrate its 74th anniversary since it was enacted. The Constitution of Japan has never been amended.

In December 2020, the General Framework for Peace in Bosnia and Herzegovina celebrated its 25th anniversary. This document includes the Bosnian Constitution in Annex Four of the Peace Agreement, and it has never been amended.

These constitutions represent a unique subset of constitutions because they are both internationalized, meaning that both constitutions were crafted, or at the very least heavily influenced by foreigners during the state-building exercises that took place following disastrous conflicts. Despite the large differences in the context of the cases and historical legacies, both internationalized constitutions have largely remained untouched since their enactment.

At first, the term ‘internationalized constitution,’ seems contradictory in itself. A constitution, at least in American mythology, is supposed to represent the ideals of a country, and also outlines the laws and norms of a state, its governance structure and the fundamental rights and freedoms of the people. Constitutions are supposed to be context specific and reflect the will of the population they seek to serve, so how can a constitution be internationalized and represent the population of a specific country?

These internationalized constitutions seek to balance the imposition of international ideals with local ownership in a guiding document for a newly rebuilt state. In this work, I will argue the following thesis: success in state-building projects stems from focusing on creating

structural ownership, which means involving domestic actors in the planning and design in the state-building process, especially in the guiding documents of a state like the Constitution. A democratic and iterative constitution-making process is an outcome of centering structural ownership in state-building strategy. This argument is based on the comparison of my two cases: Japan and Bosnia. Through the comparison between my two cases the determining factor in a successful state-building project was the democratic involvement in the constitution-making process as a result of state-builders focusing on structural ownership. Then, with elections, where structural ownership was developed, functional ownership, the involvement of the population in the implementation of state-building projects, thrived as international ideals were adopted into the domestic governance structures. Structural and functional ownership make up the concept of local ownership and are imperative in building a successful state. In my case studies, different strategies are utilized to build a state, one emphasizing structural ownership and the other emphasizing functional ownership. Emphasizing structural ownership leads to the inclusion of domestic actors in the planning and design of the state-building process, which leads to democratic constitution-making processes to build a successful state.

Local Ownership

The issue of local ownership arises any time there is international intervention, as there can be conflict between international and local actors' ideas of the state. Local ownership in this thesis refers to the involvement in the design and implementation of political processes by domestic actors (Donais 2009). Achieving local ownership is imperative to any state-building project, for local ownership also connotes the acceptance and adoption of structures or institutions built during state-building exercises.

I emphasize local ownership because the concept of domestic actors being involved in the implementation and design of political systems is in opposition to the concept of international state-building and internationalized constitutions, where international and outside figures are in control of political processes. The shift of power from international state-builders to domestic actors is an inevitable part of any state-building process because international state-builders tend to intervene for short periods of time, not indefinitely. The way the transition of power is handled can lead to success or failure of the state-building project generally. For example, handing local ownership over too early after a conflict can lead to the society reverting back to its pre-war context and solidifying divides within a society through the democratic process. Handing local ownership over too late can lead to the target state developing a strong dependency on outsiders to provide support.

Local ownership is the key criteria to measure the success of a state-building project. A state-building project is only successful if the institutions, structures and values that are implemented by international state-builders remain after the international community exits the state. The outcomes of state-building will only remain if the local population adopts them into their own political structure. Otherwise, failure of the domestic population to adopt outcomes will lead to the collapse of the structures and values of the internationally built state. Therefore, it is of the utmost importance for the guiding document of a state, the constitution, to be adopted and embraced, so it can be solidified as a foundation for future state-building endeavors. If the constitution is not accepted by the local population, the foundation of any state is at risk.

I will be using the concepts of functional and structural ownership developed by Perry and Keil (2016) to discuss local ownership throughout this work. Functional ownership focuses

on the inclusion of local actors in the implementation of projects, while structural ownership involves domestic actors participating in the structuring and design of long-term strategies, policy priorities and initiatives for achieving long-term goals (Perry and Keil 2016).

Constitution-Making

Constitution making is the process of crafting and writing a constitution. Constitution-making can refer to actions by international and domestic actors that participate in crafting a constitution, and in this thesis I will focus on the internationalized constitutions and the internationalized constitution-making process.

There is evidence, both primary and secondary, that show the great influence that international arbiters had in the creation of both the new post-war Japanese and Bosnian Constitutions. Primary evidence takes the form of government memos and reports, while secondary evidence often comes from participants in their memoirs and other histories on the topic.

Constitution-making is one part of the state-building process, but it is incredibly important because of the multitude of ways a constitution functions in a society. In both my cases, the Constitution was a primary concern for both establishing peace, and laying the groundwork for institutional and political structure.

State-Building

The term state-building in this thesis will be defined as the attempt to reconstruct, or construct for the first time, autonomous governance structures, where capacity is lacking or completely missing (Caplan 2005). State-building includes a multitude of activities in order to

create an operational state especially after physically, socially and politically destructive conflicts. Although state-building extends over a broad range of activities, this thesis will focus on the construction of the constitution, which lays the groundwork for the political structures of the states at hand.

The concept of state-building can be controversial because it assumes there is legitimacy in outside interveners building capacity within a state that is not their own. Sometimes state-building is compared to neo-colonialism as outside states are imposing their wills on weaker or failed states to create a state in the image of themselves, which is usually Western. I intend to reckon with the idea of legitimacy through the exploration of local ownership, to understand the stake the domestic actors have in the state-building process and how domestic actors' involvement translates to state-building outcomes.

Methodology

In order to understand how local ownership is developed in the process of constitution-making for internationalized constitutions, I compare two cases that maintain internationalized constitutions, Japan and Bosnia. I chose to compare Japan and Bosnia because both countries experienced international intervention through state-building after socially, politically and physically destructive conflicts, and both countries retain un-amended internationalized constitutions that were products of state-building.

Throughout the analysis section, I compare and contrast different parts of the constitution-making process, including the documents that marked the end of war, the process of constitution-making itself and the final constitutional content. This side by side comparison allows me to isolate contextual factors to explore the commonalities and differences of the two

cases. I keep in mind the contextual factors and historical legacies because they do bare greatly on all parts of the constitution-making process. Despite, the differences in context and history, there are some similarities between cases. For example, both conflicts in Japan and Bosnia were exacerbated by militarized political figures in powerful positions, which involved the creation and dissemination of propaganda and other informational campaigns. Yet, in the case of Japan one of the tenets of state-building from the post-war document included the purge of these figures from their leadership positions, while in Bosnia no such purge occurred and militaristic figures continued to have a hand in political events.

Comparisons like the example above help to understand the approaches of the international state-builders towards local ownership, constitution-making and the final outcomes of the constitutions. Both the constitution-making process and the final constitution reflect the amount of local ownership handed over. The tenets of both constitutions outline where the power of the governance structure originates, and how power is allocated throughout the political system generally.

These comparisons are arrived at through the use of primary and secondary sources. For Japan, the primary sources stem from the U.S. Office of the Historian and include digitized telegrams, memos and reports from American representatives of the State and War Departments or the Military. For Bosnia, the primary sources are the reports by the Office of the High Representative to the Peace Implementation Council about the status of the state-building project in the region. In addition to primary sources, I also used memoirs from important figures within both state-building cases, historical accounts, journal articles and books pertaining to state-building in both cases.

Roadmap

Following this Introduction, Chapter Two is a literature review that will touch on important concepts and build the analytical framework for this work. Next, Chapter Three is historical background that will outline important pre-war, war-time and post-war context for both cases. Chapter Four is the first part of the analysis and includes the comparisons between the cases of Japan and Bosnia during their constitution making process, including the situation at the end of the conflict, constitution-making process itself, and then an outline of the integral parts of the Constitution and the Governance structure. Chapter Five is a continuation of the analysis which considers how local ownership arises from the constitution-making process reviewed in the earlier chapter, and then how local ownership played a role in the inaugural elections of both countries and transitions of the cases' state-building projects. Chapter Six is the conclusion, which will summarize my findings, offer some alternative explanations and final conclusions of this work.

I. Introduction

In this chapter I introduce the analytical framework I use to link constitution-making as a part of state-building projects to local ownership by the domestic population of the target state. I first introduce the concepts of the state and state-building. I then explore the importance of constitutions, internationalized constitutions and constitution-making. Last, I define local ownership and touch upon some of the characteristics that can affect the potential for local ownership.

II. States and State-Building

What is a State?

States are the basis of our global order, yet in many scholarly works a single definition of state is lacking. The working definition I use comes from Max Weber, who defined the state as the association of institutions that successfully maintain a monopoly on legitimate authority over a recognized territory (Lottholz and Lemay-Hébert 2016). I add to Weber's definition with input from Rotberg, who emphasizes the responsibility of the state to provide political goods like security, laws and norms to settle disputes, protection of freedoms, and in modern states public goods like health care, education, a national banking system or infrastructure (Rotberg 2010).

In sum, a state is a recognized territory led by a structure of institutions that maintain a monopoly of the use of force, but also have the ability and responsibility to provide political goods to the population within the territory.

What is state-building?

State-building refers to the attempt to reconstruct, or assemble for the first time, effective and autonomous governance structures, in places where governance capacity is lacking or completely missing (Caplan 2005). I will use the terms governance structures and institutions interchangeably throughout this thesis to refer to the mechanisms of a state that seek to provide political goods as described by Rotberg, like security, laws and norms and freedoms. For example, the constitution of any country is made to establish the laws and norms, therefore making it an institution and part of the governance structure. Many definitions of state-building focus on the building of governing institutions specifically, but often, state-building exercises encompass more than simply setting up a government, and can come to describe any and all forms of international assistance to countries that have experienced or are at risk of armed conflict (Chesterman 2004).

State-building can refer to the project of building a state by the domestic government of a country, or state-building can refer to an international project in which foreign interveners seek to build up or assist in building up state apparatus. In this thesis, I focus on the latter. The qualities of state-building that are most important to understand for my definition of state-building for this project are that state-building (1) is led by and involves foreign powers; (2) is an attempt to create some form of governance structure whether that be brand new to the country, or rebuilding an old schema; and (3) has the end goal of an independent and autonomous state.

How does state-building work?

There is no singular method to state-build. State-building can be executed in a variety of ways depending on the type of intervention and target state. State-building projects can be done

with force from the military, through non-governmental organizations, through intergovernmental organizations, like the UN and the EU, or a combination of such. Depending on the breadth of the state-building project and the level of investment, foreign powers can take on the role of observer, trainer or administrator, and therefore a varied level of involvement in the process (Miller n.d.).

State-building processes can extend beyond building institutions and governance structures. Projects like the physical (re)building of infrastructure, (re)building of the economy, reconciliation within society, ending violence and securing peace can become part of the scope of state-building once they are linked to the goal of building state institutions. State-building projects have the potential to seep into every aspect of a state because state activities are interdependent. For example, if one wants to create a democratic election system, the prerequisites can include ensuring citizens can travel to polling places through adequate physical infrastructure and transportation, preventing violence, and informing the public about where and how to vote. While the main goal is to establish democratic elections, other projects must be included to ensure successful elections.

Why do foreign countries state-build in other countries?

The consensus among many scholars and foreign policy makers is that weak and failed states create a security threat for the international community. State-building missions are undertaken to secure peace (Dobbins 2003; Fukuyama 2004). Notably, in a RAND corporation report from 2003, the conclusion was that “[state]-building is the responsibility of the world’s only superpower,” referring to the United States specifically (Dobbins 2003: xv). Francis Fukuyama adds that, “Weak or failed states are close to the root of many of the world’s most

serious problems, from poverty and AIDS to drug trafficking and terrorism” (Fukuyama 2004 :17). After September 11th, there was a renewed focus on state-building because policy makers believed that such violent attacks originated in places with weak state structures. Many policy makers inextricably linked violence to weak, poor and failing states, and therefore believed if they could build strong and reliable states, they could prevent violence and its growth all together.

When and where do countries state-build?

The countries that are targets of state building projects are typically weak and failed states (Fukuyama 2004; Rotberg 2010). According to Rotberg, former President of the World Peace Foundation and professor at Harvard, strong states are differentiated from weak states by their ability to deliver “the most crucial political goods” (Rotberg 2010: 2). Rotberg explains that the most critical political good a state could supply is human security in order to prevent domestic threats, invasions or any other related dangers. Without human security, a state cannot supply other political goods like infrastructure, freedoms, schools and education, healthcare, or a money and banking system. This framework leads to the understanding that strong states are those that control their territory and provide plenty of political goods to their citizens, while weak states struggle to provide political goods whether that be through the inability to secure borders, corruption in the government or other failures. Failed states are differentiated from weak states in cases where the leadership is unable to exert its influence on its territory, violence is rampant and no political goods are provided, not even security (Rotberg 2010: 4-10).

States can fail in various ways, and their differing failures can lead to different approaches in state-building. In the cases to be examined in depth later, both Japan and Bosnia became failed states because of the physically and socially destructive nature of their conflicts.

Scholarship Perspectives on State-Building

There are two groups of scholars focused on state-building. The first group focuses on the legitimacy of both the interventions and products of state-building. They seek to reckon with neo-imperialism and the consequences of sovereign nations meddling in other sovereign nations' matters (Andersen 2012; Paris 2004). The second group looks to analyze the empirical nature of the happenings on the ground during state-building missions, like the faults and the successes within the state-building projects themselves (Dobbins 2003; Miller n.d.). These groups are not clearly in conversation with the other, but rather seem to be talking past each other. The empirical group does not question the legitimacy of state building projects, while the legitimacy group focuses on principles of intervention and rarely acknowledges empirical cases beyond their ideological failures. With this project, I seek to bridge a gap between the two groups of scholarship, and reckon with the legitimacy of state-building, especially with aspects like internationalized constitutions, and also understand the empirical facts that either led or did not lead to local ownership and a strong state. I address the effectiveness of internalized constitutions and the constitution making process, and the outcomes of the constitution-making process to better understand if and how legitimacy was created.

Synonyms for State Building

The United States has committed a variety of resources to the external building up of other states since 1945, and various terms have been used to describe the same central focus of

building a state. The main differences between the terms stem from the intentions of the project of state building, despite the fact the actions undertaken were quite similar, with efforts like institution building, constitution writing, election facilitation, market liberalization and infrastructure building. For example, the German and Japanese operations following World War II were described as “occupations,” because of the occupying force that remained in the country until the target countries were rebuilt in a favorable way to the occupying powers. After the Cold War, the early projects in the 1990s were known as “peacekeeping,” “peace building,” or “peace enforcement” missions. Peacekeeping tends to encompass stabilizing a region through securing non-violence with the intention to leave the country as soon as possible. Recent interventions in Iraq and Afghanistan have been labeled “stabilization” and “reconstruction” projects (Dobbins 2003). While terms differ throughout eras, the goal of constructing a state via foreign intervention has largely remained the same and encompassed similar tactics.

Scholarship on state building began in the 1990s, but was usually viewed through the perspective of peacekeeping. Not until the early 2000s was the process entitled “state-building” (Miller n.d.). Often times the term “nation-building” is used as a synonym for state building. Nation-building can be differentiated as building a homogenous group of people that identify as a specific nation group. State-building is focused on the institutions of governance in a territory, rather than building a community of people sharing history, customs and often language (Chesterman 2004). In some cases, the terms “peace-building,” “nation-building,” and “state-building” are used interchangeably. In this piece, I will use the terms “peace-building” and “state-building” distinctly, with peace-building focusing on establishing security and eliminating root causes of conflict, while state-building focuses on (re)building institutions and governance structures. There is often great overlap between these terms since the goals and strategies of

peace-building converge with the goals of state building. The new Constitutions in both the case of Japan and Bosnia had goals to establish peace and build a new state, demonstrating the overlap in projects. Even though the taxonomy for state-building and peace-building was invented far after the Occupation in Japan, I will be referring to the project as state-building throughout this work.

III. Constitutions

In this section, I seek to explore the historical importance of constitutions, their various uses and purposes, and the occasions that constitutions were written in post-conflict environments by the international community.

The Basics of Constitutions

To understand the importance of constitutions, we must first understand the function of constitutions. To most a constitution is a formal written document containing the basis for a legal structure. Yet, the term “constitution,” as used by the Greeks was meant to literally describe how and what something was made up of, how it was “constituted” (Zuckert and Valenzuela 2011: 72). Rather than exclusively outlining processes of law and justice, constitutions define institutional structure, and set up the structures through which power can flow: “Constitutions should limit and channel power and at the same time should somehow permit and foster those actions to achieve the common good” (Zuckert and Valenzuela 2011: 75). A similar analogy compares a constitution to instructions. Like the instructions that accompany a toy in need of assembly, a constitution is the instructions for how to assemble a government (Alexander 2011: 4).

Constitutions and the constitution making process can accomplish a multitude of goals. Constitutions can serve as a mechanism to create a shared vision of the future of the state and a path to get there. Constitutions can be peace agreements and frameworks for setting up new democracies. Constitutions can seek to transform a society from violence to peace, and create a new way to manage conflict through the structuring of power, resources and justice systems (Samuels 2006).

Post-Conflict, Internationalized Constitutions

If we understand constitutions as a set of principles to instruct the governance structure of the state, internationalized constitutions do the same thing, but are created by and reflect the views of international arbiters about governance structure, power allocation, legal issues and long term goals of a nation (Hay 2014). In this work I will refer to constitutions influenced by foreigners or the international community largely, as internationalized constitutions.

Constitutions can be internationalized through their adoption of democratic and liberal principles. One example of how constitutions are internationalized is through the embedding of international law into local judicial systems and domestic law. In the constitutions of Bosnia and Herzegovina, Kosovo and Timor-Leste, provisions are outlined such that international law is stated as integral or superior to domestic law (Hay 2014: 143-145).

Internationalized constitutions can pose a challenge to international norms like sovereignty and self-determination. Sovereignty, the authority of a state to govern itself, is violated when an outside force looks to impose its will on another state. In the example above, the incorporation of international law into a state's constitution threatens the authority of the state to govern itself.

The international community acting as a stakeholder in constitution making processes poses issues for the future legitimacy and adoption of any constitution. Much of state building scholarship is concerned with ‘local ownership,’ which alludes to the ‘locals,’ people who live in a given state, participating and influencing the process of state building and structure of governance. Local ownership is important to internationalized constitutions because constitutions that are ‘owned,’ lead to the adoption of international principles that foreigners intended to impose. Without local ownership, outside principles usually do not last and tend to be replaced with principles from the period of conflict. Much of the question of local ownership from a state builder’s perspective focuses on how to create local ownership while still imposing international ideals on a population.

The field of internalized constitutions has not yet been well researched or analyzed (Hay 2014). For this reason, the connection between internationalized constitution-making and local ownership is important to explore.

The Process of Constitution Making & Post-Conflict Constitution Making

This section focuses on the process of constitution making, which can greatly affect the end product of the constitution and the extent it is accepted by the domestic population. Constitution making encompasses the formation of ideas behind the constitution, the actors involved with the constitution making process and the writing of the constitution. Constitution making in post-conflict environments is often the starting point towards peace, stability and a shared society (Hart 2001). Since 1974, more than 170 countries have looked to adopt or rework their constitution, which is often sparked by some form of armed conflict (Benomar 2004; Hart 2001). There is not always peace or stability when a post-conflict constitution is first drafted, and

constitutions can be used as peace documents as well. Constitution-making is not a thing of the past, but is a core necessity for any state-building mission (Samuels 2006). As noted by Dr. Kristi Samuels, the lead legal consultant to the United Nations Development Program on the constitution-building process for Somalia, “the design of a constitution and constitution making process is an integral part of the political and governance transition in [state]-building” (Samuels 2006: 664).

Scholars focusing on the process of constitution making, especially in post-conflict states, have found that constitution making itself greatly affects the state at hand, and that constitution processes and results are “often so interrelated as to be inseparable” (Hay 2014: 144; Samuels 2006). Scholars found that more inclusive constitution making processes led to constitutions including greater political equity, human rights protections and social justice provisions than constitutions made solely by elites or without all groups involved in the conflict (Benomar 2004; Hart 2001; Samuels 2006). Additionally, things like transparency in the constitution making process and calls for public participation only increased the legitimacy of the final product (Benomar 2004; Hart 2001).

A form of ‘new constitutionalism,’ in post-conflict environments, focuses on constitution making as a conversation and a process that centers groups, individuals, identities and rights. Rather than ‘old constitutionalism,’ that focuses on constitutions as documents that define power and citizenship (Hart 2001).

A perfectly written document cannot single-handedly be used to fix a society. Weak and fragile states are not blank slates on which to build a new democratic system of governance, but rather a place with history and norms that a constitution must fit into (Chesterman 2005). Old

constitutionalism represents a stagnant unchanging way of thinking about the constitution as an event or a box to check, whereas new constitutionalism invites a process and many parties at the table. All in all, the process of constitution making clearly affects the design and end product that becomes a state's constitution.

IV. Local Ownership

Local ownership refers to the extent to which domestic actors are involved in both the implementation and the design of political processes (Donais 2009):3). The inclusion of 'locals' promotes the acceptance of the state building project, and the likelihood that institutions built by the locals will remain after international actors leave (Perry and Keil 2016). Local ownership is important because without the domestic acceptance of the structures of the state-building projects, they are likely to fail (Donais 2009).

The issue of local ownership will always be prevalent in balancing the relationship between foreign and domestic actors in state-building exercises. There will always have to be decisions made about the allocations of power between foreigners and locals while foreigners remain in-country. Confronting how to handle local ownership can be postponed, but it cannot be eliminated (Donais 2009).

Perry and Keil make the differentiation between two types of ownership: functional ownership and structural ownership. Functional ownership includes the involvement of local actors in the implementation of projects, while structural ownership involves domestic actors participating in the structuring and design of long-term strategies, policy priorities and initiatives for achieving long-term goals (Perry and Keil 2016). In the long run, both functional and structural ownership are required to maintain local ownership. An example of the difference

between functional and structural ownership can be seen with elections. Functional ownership can be seen when domestic actors *participate* in elections, especially in cases where the elections are put together by the international community (IC), while structural ownership can be seen when domestic actors *plan and coordinate* elections. After the IC leaves, the expectation is for domestic actors to ‘own’ all parts of the election example, and all parts of the governance structure of the state broadly.

The concepts of functional and structural ownership can be used strategically during state-building. If the international community adopts a functional ownership first policy, the IC will seek to get domestic actors to participate in the building process quickly through things like the aforementioned elections or building up and participating in public services. Focusing on functional ownership first is associated with the logic that involvement and familiarity with new externally imposed processes will lead to higher level involvement gradually. If the international community focuses on structural ownership instead, the IC will seek to place domestic actors in powerful roles for them to contribute to the planning and design of the new and improved state. By focusing on structural ownership, the IC tends to build and secure a functioning state structure, and then place domestic actors in high level roles to be able to partake in design and planning of the state.

The idea of focusing on functional or structural ownership correlates to the idea that the IC either treats local ownership as a policy, or treats local ownership as a goal in and of itself (Joseph 2007; Knaus and Martin 2003). Treating local ownership like a policy leads to an emphasis on including domestic actors in most projects, while treating local ownership as a goal is less dependent on the means as long as local ownership is the final goal. Local ownership as a

policy fits with functional ownership, as they both emphasize the involvement of domestic actors throughout the state-building implementation process. While local ownership as a goal can be associated with structural ownership, for structural ownership is focused on the inclusion of domestic actors in the design, planning and management of the state-building project, and is less concerned with the involvement of domestic actors immediately and on lower levels of implementation. To summarize, there are two approaches to state-building that I will consider: (1) functional ownership with local ownership as a policy, and (2) structural ownership with local ownership as an end goal (Joseph 2007; Knaus and Martin 2003; Perry and Keil 2016).

There is a connection between local ownership and state sovereignty. During state-building interventions the power that comes from domestic leadership is stifled to build a state. The end goal is to deliver a functioning state to the local people; but without the locals being in control of the planning or operation of the state-building project, the intervention can violate a state's sovereignty. The conflict that precedes a state-building intervention is the catalyst for intervention and loss of sovereignty, but the real issue of state-building centers on when, and how to restore sovereignty. While most interventions that took place in the 1990s were approved and supported by the UN, the concept of state-building itself contradicts the ideals of sovereignty and self-determination put forth by the UN. Yet, this contradiction is allowed in the UN Charter because of the security threats created by conflicts. To maintain local ownership, is to be operating a sovereign state.

Problems with local ownership

There are three impediments that often prevent state builders from granting local ownership: conflation with good governance, the problem of “internationals-know-best” and time frames.

The concept of local ownership is often conflated with the ideas of good governance. From the good governance perspective, the responsibility of the target state is to take ownership of the predetermined set of policies created by international interveners and operate them well (Donais 2009:6). In this conflation, the international community views its role as reshaping a failed state into a functioning one, then gifting the functioning state structure to the local people. The people are then responsible for operating the gifted state without having had any say in its creation. Gifting a state without input is distinctly opposite from local ownership, by some standards ‘gifting’ actually disempowers locals by expecting them to blindly accept what is imposed from above.

The issue of “internationals-know-best” can be broken down into two assumptions: (1) international interveners believe their solutions are the best solutions, and (2) the local population would have been unable to solve their problems without intervention. Because liberal state-building programs originated in the 1990s, they often have a technocratic flavor such that technical knowledge about the liberal democratic state takes precedence over local knowledge. In this technocratic view, the perspectives of locals are viewed more as obstacles to overcome than as helpful input for designing a sustainable state (Donais 2009). Additionally, what Hughes and Pupavac call pathologization occurs, which frames locals as incompetent and backwards, therefore shifting the responsibility to so-called international experts to heal the wounds of a broken state (Donais 2009; Hughes and Pupavac 2005). Under these conditions, local ownership is allocated carefully and at the will of the responsible interveners. This benefactor-recipient relationship harkens back to colonialism and the white man’s burden, where locals are supposed to play the role of the grateful heathen (Donais 2009; Paris 2004).

The last impediment is timing, with the formulation of state-building documents, plans and exit strategies. First, state-building documents are often forged quickly in order to stop violence as soon as possible, leading to an inability to negotiate with the local population and the creation of hard-to-alter principles, goals and strategies of the state-building project. The problem with exit strategies starts with the inability for international interveners to make their exit date flexible. Most state-building missions are focused on completing projects, and often their funding is dependent on progress. Temporary state-building missions push interveners to try and work as quickly as possible, setting short timelines and looking for tangible numerical results, perhaps at the cost of creating long lasting institutions and structures (Donais 2009).

Assumptions of Local Ownership

In order for reforms from state-building to take hold, they must be adopted by the locals. But the issue with the concept of the ‘locals’ is that the locals are imagined as one homogenous group with the same wants and needs. Yet, there is rarely one singular body in which all members seek the same societal outcomes, especially in post-conflict situations (Donais 2009). Some groups may not have the capacity or, simply, the will to reform the state. The project of state building relies on the idea that local actors want to build a peaceful state, but there is a potential that some do not want a peaceful state or envision a state differently than the way state-builders do (Donais 2009; Joseph 2007).

Additionally, state-building relies on the transmission of norms from one system to another, yet these outside norms are not always easily accepted especially when they contradict with domestic norms. The challenge of transmitting norms often appears when training security forces to adhere to Western values of protecting all citizens and relinquishing grudges about particular

groups within society. To accomplish learning international principles, internationals often must disassemble the structure that exists in the state in order to rebuild it in a way that functions according to Western values (Donais 2009; Joseph 2007). International norms are not easily absorbed into a system without this rebuilding, which is at the heart of state-building missions.

Lastly, problems arise in timing with handing over local ownership too early and too late. If too much power is given up too early, there is a risk that dangerous structures of hate and violence can be legitimized by the state's structure. If local ownership is handed over too late, there is a risk of a state growing dependent on the international community and its interventions. The formula for state-building has not been completely solved, as the record of post-Cold War state-building endeavors shows that more than half of the projects collapse within the first five years (Donais 2009).

V. Conclusion

This chapter has set up the analytical framework through which I will compare my two cases of post-conflict state-building. I use the scholarship on constitution-making and local ownership to assess the cases of Japan and Bosnia. My goal is to prove that democratic constitution-making processes best balance the imposition of values from internationals with the values of domestic actors. In addition, democratic constitution-making reflects the use of state-building strategies that focus on local ownership as an end goal, rather than a policy, which leads to inclusion of domestic actors in the design of political structures and successive state-building outcomes in the long-term.

In the next chapter, I will provide a historical overview of my cases. After, I will then compare the constitution-making processes and final constitutional content between the two

cases, followed by the evidence or lack thereof of functional and structural local ownership in elections and state-building project transitions in the cases.

Chapter Three: Historical Background

In this chapter, I discuss the historical background of my cases, in order to provide the context for their state building projects. I start with the pre-war context of each country, then describe the conflict and the stakes of the conflict. I briefly include how the conflicts ended. In both of the cases, the end of the conflicts fed directly into the constitution-making process.

I. Japan

Pre-war Context

To many Americans, the pervasive narrative concerning Japan during World War II came from the International Military Tribunal for the Far East that summarized Japan's militancy during World War II as Japan seeking Far East domination, launching campaigns of aggression in order to meet its goals. To a Western audience, World War II has largely been reduced to a dual over good and evil: the Allies -- the U.S., Great Britain and the Soviet Union -- were said to stand for peace and democracy, while the Axis -- Germany, Italy and Japan -- were said to support aggression and chaos (Hama 2017).

In Japan, World War II is often referred to as the "Greater East Asian War." To many Japanese the prewar build up and war itself are viewed in a completely different way than the Western view suggests. Beginning in the 19th century, Japan had observed as China was overrun by European and Russian forces, and in self-defense and admiration, Japan began to emulate the West in empire-building. Social and political institutions were modernized to fit into the Western paradigm, and Japan transferred from an agrarian economy to a manufacturing and export-based economy. Japan grew faster from the Meiji Restoration (1868) to World War II than any other

country in the world due to the emphasis on education, savings, technological borrowing and market exchange rates (Nafziger 1995). With this economic and technological growth came a rising standard of living and almost doubling of the population (Hama 2017: 49).

On the heels of Japan's victory over China in the Sino-Japanese War in 1895 and demonstrated strength in the Russo-Japanese War (1904 -1905), U.S. President Theodore Roosevelt was recorded multiple times supporting a sort of "Japanese Monroe Doctrine," which entailed Japan creating its own spheres of influence throughout East Asia. Pre-war Japan was focused on the idea that international cooperation with the West would lead to fair treatment as an equal in foreign policy (Hama 2017).

Japan's expansionism stemmed from two economic and political goals: Japan needed a place for its ballooning population to work and Japan wanted to be seen as independent and equal among other world powers. In the 1920s, Japan pursued peaceful expansionism to extend its influence throughout East Asia, but it largely failed. For that reason, in the 1930s, Japan employed militaristic expansionism in order to fulfill its earlier stated goals. Japan invaded Manchuria in 1931, and by 1938 most of China was under the occupation of the Japanese. At the height of Japanese expansionism, the Japanese empire extended into mainland China, Korea, Southeast Asia and the archipelagos lying between mainland Japan and Australia (Streissguth 2003).

Supreme Commander of Allied Powers General Douglas MacArthur noted that Japan's surging population, booming manufacturing industry and lack of indigenous raw materials was the main catalyst for Japanese expansionism, and this expansionism is ultimately what drew Japan into the Second World War (Hama 2017).

World War II

After the Japanese invasion of Manchuria and Japan's ongoing war with China, tensions between Japan and the United States grew. Domestically, the Japanese Government began adopting repressive policies like limiting freedom of speech and controlling the media in order to heighten support for the war in China. The Japanese education system bred patriotism for war efforts through introducing curriculum focused on worshipping the Emperor and militarism. Shintoism became representative of Japan, and was used similarly to education to breed patriotism and nationalism in the citizenry of Japan. When passing the Imperial Palace, the home of the Emperor, or Shinto shrines, citizens were expected to bow (Ienaga 1978).

The Japanese military looked to conquer the Netherlands East Indies as a resource hub, but this encroachment crossed the line in the eyes of the Americans, British, Dutch and Chinese. In July 1941, these countries formed the ABCD group, and blocked Japan through freezing assets. The U.S. also imposed an oil embargo on Japan. Japan would not be able to continue the war in China without oil and other raw materials that were blocked by the ABCD group (Ienaga 1978). Not wanting to lose their advances into China, Japan doubled down, the Japanese military planned to attack in early December if they could not come to a compromise with the U.S. In negotiations, the U.S. demanded unconditional withdrawal from China and French Indochina, which was unacceptable to the Japanese after years of military sacrifices. With that failure to compromise, Japan attacked Pearl Harbor and the Malay Peninsula to begin the war against the U.S. and England (Ienaga 1978).

Japan was repeatedly beat on land and sea throughout 1942 through the eventual end of the war in 1945. In November 1944, Americans first attacked Tokyo from the Mariana Islands,

and through a series of further island battles, the U.S. forces quickly moved within easy striking range of Japan. In March 1945, air raids were conducted over Tokyo and smaller cities like Nagoya, Osaka, Yokohama and Kobe. By April, American forces landed in Okinawa, a Southern island in Japan. On August 6, 1945, an atomic bomb was dropped on Hiroshima, and three days later a second was dropped on Nagasaki. The Soviet Union declared war on Japan on August 8, and began attacking in Manchuria and Northern Korea. Japan was facing the wrath of the allies from all fronts.

The leadership of the military is largely to blame for the overzealous attacks on both the U.S. and England at once (Hama 2017; Ienaga 1978; Schaller 1987). One analysis explains that the education system and repressive internal security laws made it so the Japanese could not accurately perceive the realities of the conflict. Japanese deaths from July 1937 through August 1945 from combat totaled 2.3 million, which does not include the losses of civilians or missing persons (Ienaga 1978).

End of World War II

The Emperor declared surrender on August 15, 1945. It was clear to all, except the military, that Japan was not going to emerge from the war as the victor. The military advocated for a final stand, when and if the Allies arrived on the shores of the mainland of Japan (Ienaga 1978). Although the Emperor was the commander of the military, the emboldened military leadership rebuked the idea of surrender. A group of army officers even planned a coup in hopes of seizing power and establishing a military government to continue the war. The coup failed. Yet, there was a pervasive feeling of shame throughout Japan, rather than use the term

‘surrender,’ the government often used the phrases ‘acceptance of the Potsdam Declaration’ or the ‘end of the war’ (Ienaga 1978: 233).

In accordance with the Potsdam Declaration that outlined the terms for surrender, American occupation forces entered Japan under the command of General Douglas MacArthur, the Supreme Commander of the Allied Powers (SCAP). SCAP was in charge of the demilitarization and democratization of Japan.

II. Bosnia

Pre-War Context

The Bosnian conflict was the direct result of the dissolution of Yugoslavia, and the dissolution of Yugoslavia had its origins in the historical identities of the communities residing within Bosnia (Berg and Shoup 1999). Bosnia contained three distinct communities: the Bosniaks (once referred to as Muslims), the Serbs and the Croats. The three communities share a common language and lifestyle. Yet, each community had loyalties to religions, nationalities or ethnicities rather than have formed one cohesive multicultural people. Although Bosnia has been the home of three different communities for centuries, historically there were not many ethnically motivated conflicts before World War II (Berg and Shoup 1999). Shared history brought these communities together, but a shared identity was never forged (Andjelic and Andjelic 2003; Berg and Shoup 1999).

During World War II, the Axis powers invaded Yugoslavia in April 1941, and established the Independent State of Croatia, a puppet state which included the territory of Croatia, Bosnia-Herzegovina and some of Serbia and Slovenia. It was ruled by the fascist Ustasa, which was aligned with the Axis powers. Between 1941 and 1942, the Ustasa regime killed

between 320,000 and 340,000 ethnic Serbs in Croatia and Bosnia-Herzegovina (United States Holocaust Memorial Museum, Washington, DC n.d.). This genocide left a permanent scar on the relations between Serb and Croat communities.

The Communist party reestablished Yugoslavia after liberating the country from German rule, under the motto “brotherhood and unity”. With the employment of federation and soft-communism, Yugoslavia and Bosnia within prospered (Andjelic and Andjelic 2003). Yugoslavia was made up of six republics, Serbia, Slovenia, Montenegro, Bosnia-Herzegovina, Croatia and Macedonia, and two autonomous provinces Vojvodina and Kosovo. In the beginning of Communist rule, Yugoslavia was a highly centralized communist country ruled by President for life Josip Broz Tito.

The 1974 Constitution in Yugoslavia formalized the process of decentralization that began around the mid-1960s. The greatest change was the new definition of the republics and provinces as equal federal units of the country of Yugoslavia. Each federal unit became an independent agent, although constrained by Tito. The 1974 Constitution made the way for the federal units to practice operating independently. Tito as President for life was written in the Constitution as the commander of the military, but there was no direction after his death except to generally operate Yugoslavia via consensus (Meier and Ramet 1999).

Throughout the late 1980s, Milosevic and the Serbia leadership politically conquered both autonomous regions of Vojvodina and Kosovo, and also Montenegro, which meant that Milosevic was expanding Serbian influence for a ‘Greater Serbia.’ The army leadership continued to side with Milosevic in state matters (Meier and Ramet 1999).

Slovenia, concerned with the power Serbia was gaining, and fed up with the unequal financial burdens on the republic pushed for Yugoslavia to become a confederation and grant individual federal units greater sovereignty. Croatia and Slovenia both began planning free, multiparty elections for April 1990. The other federal units within Yugoslavia had an issue with the elections because they allowed for political pluralism, which was against the standing Constitution (Meier and Ramet 1999).

In mid-May 1990, riots began in Croatia, largely incited by Milosevic's provocations through emphasizing how difficult it was to live in Croatia as a Serb. In August, armed civilians in the Croatian city of Knin set up blockades in the roads, their weapons coming from the Serb local police. Minority enclaves of Serbs later began emulating these actions across Bosnia. The historic mythology that wherever Serbs lived was Serbia advanced these provocations (Meier and Ramet 1999). The violence in Croatia and Serb enclaves were some of the first acts of violence that would lead to war.

Slovenia and Croatia declared formal independence on June 25, 1991. Briefly, the Yugoslav Army intervened in Slovenia, but withdrew shortly after confirming Slovenia's independence. Following Croatia's independence announcement, Serb minority populations within Croatia declared their own independence from the republic and their desire to join Serbia. The Yugoslav army came to intervene to stop the violence, but it became clear they sided with the Serb population in Croatia (Meier and Ramet 1999). Bosnia-Herzegovina had a referendum on independence in March 1992, which was boycotted by the Serb community, but BiH still declared its independence in March 1992. Serbs in Bosnia followed by declaring independence

from Bosnia. The crumbling of the once united Yugoslavia, and competing independence claims are the catalysts for the war in Bosnia.

The Bosnian War

The conflict in Bosnia took place between April 1992 and December 1995, and it was continuously stoked by hate propaganda and rumor-filled stories to create panic amongst all three communities.

The Serbian nationalist program managed by Bosnian Serb leader Radovan Karadzic included the goal of territorial and ideological expansion. Militant Serbs evoked the historic and nationalist story that wherever Serbs lived was a part of Serbia, and therefore it was their obligation to attach Serbian-occupied land to the growing Serbian state (Ramet 2006). Milosevic specifically focused on crafting propaganda to fuel ideas of paranoia, conspiracy and negative historical memories in order to persuade Serb combatants into committing crimes against other ethnic groups. For example, the large number of lives lost during World War II at the hands of the Croatian Ustasa was invoked to drive a wedge between the Serb and Croat communities. Frequently, Milosevic emphasized that Serbs in Bosnia and Croatia were able to proclaim the right of self-determination, while stoking fears especially concerning the Bosniaks (Ramet 2006).

Croatian nationalism led by President Franjo Tudjman was based around protecting the homeland of Croatia, and taking the flexible borders of Bosnia in the aftermath of the dissolution of Yugoslavia to grow Croatia. During the war years, most Croatian propaganda focused on villainizing the Serbs (Ramet 2006). Alijia Izetbegovic, the president of the Party of Democratic Action aimed at the Bosniaks, focused on citizen equality within Bosnia rather than a state

privileging one national group. Izetbegovic was also elected to the presidency of Bosnia in the multiparty elections that took place in 1990, and he was the President of the Presidency at that time, which made him the leader of Bosnia.

Immediately after the night of the Bosnian referendum for independence, March 1, 1992, nationalist Serbs built barricades around Sarajevo and other cities across Bosnia. Serbs began shelling the Sarajevo suburbs in early April. The Bosniaks were unprepared concerning the amount and availability of weapons. Around the same time in early April, the Serbs declared their own independence as the Serbian Republic or Republika Srpska within Bosnia.

Milosevic and Karadzic sent troops to expel non-Serb populations from parts of Bosnia that were to be a part of the Republika Srpska they were building, which was to be done through a combination of ethnic cleansing, terror and elimination of multiculturalism (Ramet 2006). Through instituting grotesque acts like eyeball gouging and sexual abuse, nationalist Serbs frightened citizens to flee their homes. Detention camps were also used to detain enemy combatants and civilians alike. Once in the camp the detainees were frequently violently beaten, humiliated and often killed. Serbs also targeted places that represented cosmopolitanism, like the National Library in Sarajevo, in order to show that multiculturalism and living together with others was simply impossible and that living in solely ethnic communities was the only sustainable way to live.

On December 17, 1992, the Bosnian Serb parliament issued a statement declaring that the war was over noting that the Serb nation had achieved its territorial objectives in Bosnia. The next month, January 1993, each community was approached with a peace plan, the Vance-Owen Plan that would ask the Serbs to give up some of the land they now claimed as their own. All

parties except the Serb leader Karadzic signed the plan. The Vance-Owen plan was followed by the Karadzic-Boban plan of June 1993, the Owen-Stoltenberg Plan of August 1993, the EU Action Plan of December 1993 and the Contact Group Plan of July 1994. None of the plans were successful, although certain parts of some of them were included in the final Peace Agreement document, the Dayton Accords (Ramet 2006).

Perhaps one of the last straws for the West to get involved forcefully was the genocide in 1995 at the UN-declared safe area of Srebrenica. The Serbs had dominated UN forces through shackling peacekeepers and violating UN no-fly zones. Beginning on June 15, the waters were tested by Serb nationalist General Mladic, as he shelled Srebrenica. UNPROFOR, the supposed peace keeping and protective force from the United Nations, did not respond, and Mladic began his assault on July 6. Mladic's forces separated able-bodied men from women, children and the elderly to kill them. More than 7,000 men were killed over several days. The UN and NATO, in failing to provide meaningful backup or air strikes failed the people of Srebrenica (Ramet 2006).

On August 28, 1995, a mortar struck Sarajevo's central market leading to 37 casualties and wounding 80 or more. This came just after the loss of three high-ranking US diplomats involved in peace talks who had been on their way to Sarajevo. On August 30, NATO began bombing Serbian strongholds (Ramet 2006).

According to the "Bosnian Book of the Dead" approximately 100,000 people died as a direct result of the fighting in the war in Bosnia (Balkan Insight 2013). Some 2.7 million people were displaced from their homes. Seventy percent of historical buildings, places of worship, cemeteries, libraries and archives had been destroyed since the early portion of the war. Throughout Bosnia more than 1,700,000 people experienced psychological problems after the

war, and it was estimated up to sixty per cent of the population struggled with post-traumatic stress disorder (Ramet 2006). All this to say the losses of this war were tremendous.

The End of the War

The Americans arranged for the peace talks to occur in Dayton, Ohio beginning on November 1, 1995 between Milosevic representing the Bosnian Serbs, Tudjman representing the Bosnian Croats, and Izetbegovic representing the Bosniaks. The three sides reached an agreement on November 21, 1995, and the war finally came to an end. The agreement was officially signed in Paris on December 14, 1995. This agreement, the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement or Dayton Accords outlined the tenets of the following peace and state building project as well as created a brand new Constitution for the people of Bosnia.

III. Conclusion

This chapter provides a background of the pre-war contexts, war atrocities and end of war processes in order to set the stage to understand the meaningful aspects of both the state-building projects and Constitution-making processes in both cases. It is clear that the cases are very distinct in the challenges of both the pre-war context and the wars themselves, yet the reason these cases are comparable is because of the state-building projects that ensued after conflict ended and the inclusion of internationalized constitutions in both countries. Key to the analysis are the contextual issues of three-front ethno-nationalized groups fighting within Bosnia, and militaristic leadership propelling war efforts in Japan.

Chapter Four:

Local Ownership in Constitution-Making

In this chapter, I argue that iterative, democratic constitution-making processes during state-building lead to greater local ownership. In the first part of my analysis, I consider how the constitution-making processes differ between Japan and Bosnia. I touch on the differences between my cases in the way the conflicts ended, the actors involved, and how those characteristics affected the process of constitution-making and the content of the constitutions. The similarity that makes these cases comparable is the presence of internationalized constitutions in both cases, even though they were arrived at through different means. In Japan, the principles of the Constitution stemmed from the international community, but the constitution-making process was democratic and involved domestic actors, while in Bosnia that Constitution was written by the interveners in the Bosnian conflict as a part of the peace agreement.

I. Nature of the Conflict

Japan and Bosnia did not experience the same type of conflict, neither did their conflicts end in the same fashion. Japan was an actor in World War II, and the war ended by domination from the allies and the ultimate surrender of Japan. In Bosnia, a three-front civil conflict arose during the breakup of Yugoslavia that was ended by a peace agreement forged by the international community. These differences affected the strategies of state-building, and the principles that would be included in the war-ending documents, and later included in the final versions of the constitutions.

Japan's War-Ending Document: the Potsdam Declaration

In direct response to the nature of World War II, the Potsdam Declaration outlined six key tenets that Japan had to meet after its surrender. To prevent future conflicts originating from Japan, the Allies sought to install a democratic governance system. The tenets from the Potsdam Declaration are summarized as follows: 1) Japan had to eliminate militaristic persons that drove war efforts; 2) Japan had to be occupied until war-making power was destroyed and Japan met the Allies' terms; 3) The Japanese government had to remove obstacles to democracy and strengthen democratic tendencies among Japanese people; 4) Japan could not retain war-making industries; 5) The allies had to leave Japan after these objectives were accomplished and a new government was established based upon the "freely expressed will of the Japanese people;" 6) Japan was required to surrender and agree to these principles, or otherwise it would be destroyed by the Allies (Potsdam Declaration Annex II, art.3, July 26, 1945).

The Potsdam Declaration was signed on July 26, 1945, but it did not immediately end World War II. Fighting still continued through the next month until the Emperor made a radio broadcast on August 15, 1945, announcing the plan to surrender. On September 2, 1945, a formal surrender document was signed on the deck of the U.S.S. Missouri in Tokyo Bay. When the surrender was made official, the Emperor also agreed to the terms of surrender based in the Potsdam Declaration.

Bosnia's War-Ending Document: the General Framework Agreement for Peace in

Bosnia and Herzegovina

The General Framework Agreement for Peace in Bosnia and Herzegovina, also referred to as the Dayton Agreement or Dayton Accords, outlined the principles for peace and later state-

building projects in Bosnia, and it was much more ambitious than Potsdam. It was intended to end the war like Potsdam, and also included extensive military provisions, a new Bosnian Constitution and principles for handling civilian peace implementation measures. Essentially, the Dayton agreement played the role of a peace treaty, a new constitution and a planning document for dividing responsibilities among international actors, all in one.

The parties involved in the signing of the Dayton Accords agreed to (1) settle issues diplomatically; (2) welcome the military aspects of the peace settlement and regional stabilization plan; (3) accept the boundary demarcation between two entities;¹ (4) endorse the election plan; (5) welcome the Constitution of Bosnia and Herzegovina and respect and fulfill the commitments within that document; (6) welcome the arrangements of various commissions to protect human rights, refugees and displaced persons and preserve national monuments ; (7) recognize that the observance of human rights and protection of refugees is vital for peace; (8) agree to the civilian implementation process; (9) cooperate with all entities involved in this peace settlement; (10) recognize the Federal Republic of Yugoslavia and the Republic of Bosnia and Herzegovina as sovereign independent states (The General Framework for Peace in Bosnia and Herzegovina, art. 1-11, November 21, 1995).²

¹ The two entities that came into existence with the Dayton Agreement are the (1) Federation of Bosnia and Herzegovina and (2) the Republika Srpska.

² The parties involved with signing the Dayton Accords included the President of the Republic of Serbia, Slobodan Milosevic (who was representing Bosnian Serb interests), President of Croatia Franjo Tudjman (who was representing Bosnian Croats), President of Bosnia and Herzegovina Alija Izetbegovic (who was representing Bosniak interests).

Comparing Potsdam and Dayton

In table 1, the Potsdam Declaration and the Dayton Agreement are compared as war-ending documents in terms of the similar purpose they served between cases.

Table 1: Comparing War-Ending Documents

Characteristics	Potsdam Declaration (Japan)	Dayton Agreement (Bosnia)
Acceptance/Signing of document led to the end of the conflict	✓	✓
Outlined tenets of state building project	✓	✓
Included instructions for military occupation		✓
Included new Constitution		✓
Referred to creating democracy	✓	✓

The nature of the conflict determined the provisions that had to be accounted for in the war-ending documents. In the case of Japan, the Allied military victory left the country few other options but to agree to the terms presented in Potsdam. Whereas, in the case of Bosnia, the Dayton Agreement had to do more than simply end the violence, it sought to ensure lasting peace. The collapse of Yugoslavia followed by the Bosnian war left Bosnia as a failed state. Without rebuilding a functioning state, the consensus of the West was that Bosnia was doomed to resume fighting since a power vacuum existed (Paris 2004). The Dayton Accords was an attempt to promote peace through both military measures and civilian implementation including democratization.

II. Actors Involved

In Japan and Bosnia, the number of actors involved and the type of actors themselves differed. The occupation in Japan can be considered primarily a unilateral military intervention, while the state-building project in Bosnia was multilateral military and civilian from its inception.

Japan

The main actor in the occupation of Japan was the Office of Supreme Commander for the Allied Powers (SCAP). The role of Supreme Commander was designated for General Douglas MacArthur. The SCAP had complete authority over the Emperor and government of Japan, pursuant of the Potsdam Declaration, which specifically outlined SCAP's powers as follows:

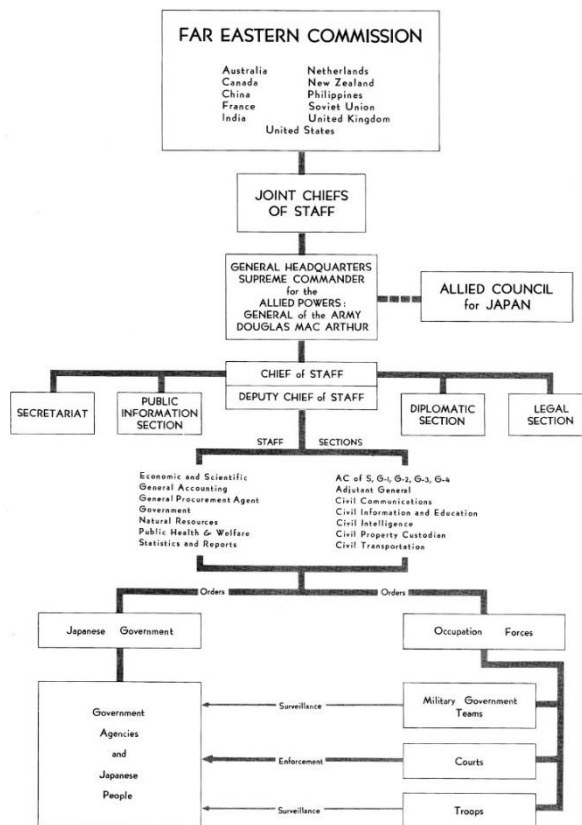
From the moment of surrender, the authority of the Emperor and the Japanese Government to rule the state will be subject to you and you will take such steps as you deem proper to effectuate the surrender terms. You will exercise supreme command over all land, sea and air forces which may be allocated for enforcement in Japan of the surrender terms by the Allied Forces concerned ((1) Rad W 48672 (TS), WARCOS to CINCAFPAC, 13 Aug 45. In C/S GHQ SWPA, WD 1119 (S)).

Though MacArthur was given Supreme authority over Japan, the Allies also encouraged MacArthur to use the existing power structures of the Emperor of Japan and the Japanese Government to accomplish the terms of surrender from the Potsdam Declaration.

Beyond the leading role of the SCAP, there were three advisory bodies: the U.S. Joint Chiefs of Staff, the Far East Commission and the Allied Council for Japan. The U.S. Joint Chiefs of Staff oversaw General MacArthur and was responsible for the initial document, "Basic Directive for Post-Surrender Military Government in Japan Proper," concerning the policies for the occupation of Japan. The Far East Commission (FEC) was made up of eleven states and was

responsible for the high level policy decisions concerning the occupation from the viewpoint of the Allies. The Allied Council was an advisory body located in Tokyo with only four members, which included the SCAP as the chairman and representatives from the U.S., Soviet Union and China, and one single member representing the U.K., Australia, New Zealand and India. Policies were adopted by the FEC, transmitted through the Joint Chiefs of Staff to the SCAP, who would issue the necessary orders to the Japanese government and occupation forces. The Allied Council was often consulted concerning execution of policy decisions (Reports of General MacArthur, MacArthur in Japan: The Occupation: Military Phase, Volume I Supplement n.d.).

Figure 1: Command Structure of American military forces during the Occupation of Japan from the digitized Reports of General MacArthur



The Allies were able to assert influence on the Occupation of Japan through the FEC and the Allied Council, which made the project not entirely unilateral. The hierarchical nature of the organization of the command structure helped streamline the process of state-building. All policies began with the FEC based on the fulfillment of the Potsdam Declaration and flowed downwards through the SCAP with ultimate implementation by staff sections.

Bosnia

In Bosnia, the state-building project was multilateral from its inception. The Dayton Agreement included a number of tasks concerning peace-building, which later transitioned to state building exercises.³ Tasks of peace-building were assigned to different international organizations for implementation. The Dayton Agreement extensively outlined strategies for the military and regional stabilization and also indicated civilian implementation measures but with far fewer details attached. The Dayton Agreement included many provisions, and they can be split into two pillars: peace & regional security and civilian implementation.

Peace and regional stability was handled by NATO, which led the Implementation Force (IFOR) starting with 60,000 NATO and other country troops, beginning in December 1995 (Berg and Shoup 1999). IFOR was in charge of enforcing the cease-fire, withdrawal and separation of forces, relocation of heavy weapons and demobilization of forces, and the safe withdrawal of UN

³ Peace building, defined as “effort to eliminate the root causes of conflict, to promote security of the individual, societal groups and the state, and to nurture features that create the conditions for a stable peace” (Barnett, Fang, and Zürcher 2014: 5) differs from state building, which is concerned with creating and strengthening state institutions. The Dayton agreement outlines peace-building exercises, which transitioned to state building exercises later. These projects work together as peace is required to effectively state build.

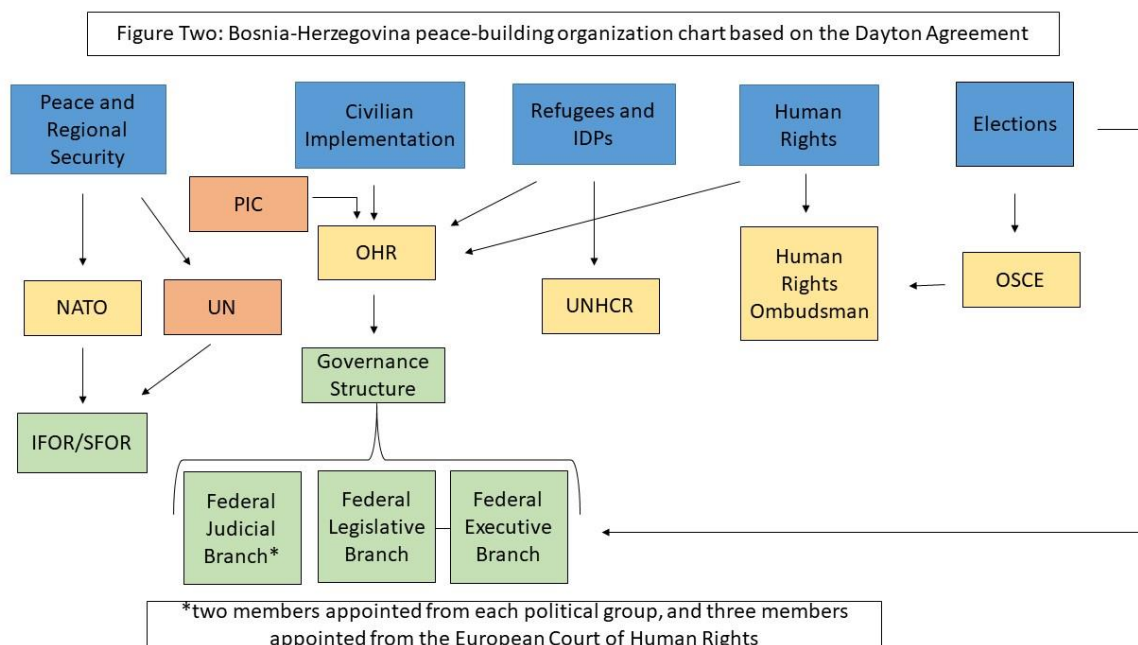
forces. After the one year obligation of IFOR, as outlined by Dayton, it was replaced by the Stabilization Force (SFOR), which was still coordinated by NATO. Both IFOR and SFOR were authorized by the Security Council, but without responsibility to the UN.

The civilian implementation measures included a greater breadth of goals than the military implementation and included more organizations. The civilian implementation was coordinated by the Office of the High Representative (OHR), which was created by the Dayton Agreement. The OHR is an ad hoc international institution, and its role is to oversee civilian implementation in Bosnia. The OHR is responsible to the Peace Implementation Council (PIC), which was established after the signing of the Dayton Accords to monitor and assist in state building efforts until the principles of Dayton have been met. The OHR is staffed by internationals representing the interests of the PIC in support of peace and state building in Bosnia and Herzegovina. The Steering Board of the PIC, who are the main directors, includes representatives from Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Presidency of the EU, the European Commission and the Organization of the Islamic Conference (OIC). The Steering Board was meant to meet monthly and assist in guiding peace implementation in Bosnia (Conclusions of the Peace Implementation Conference held at Lancaster House, London, on 8 and 9 December 1995).

The creation of the OHR originated from the need to satisfy the European states. With the United States leading the military aspects of peace through NATO, European states wanted to be responsible for civilian implementation (Berg and Shoup 1999). The OHR was involved in many projects throughout the country, including the provisions for human rights, the return of refugees

and internally displaced persons, implementation of the governance structure as put forth in the constitution and other logistics measures like creating common license plates, currency and symbols like the flag. The OHR also serves to coordinate international organizations and NGOs within the country.

Figure 2 is a diagram of the peace- and state building operations in Bosnia. The two pillars of peace and regional security and civilian implementation can be seen at the top as the two largest blue boxes, all of the blue boxes represent facets of peace/state-building specifically mentioned in the Dayton Agreement. The small yellow boxes represent the international organizations involved in implementation of the Dayton Agreement. The green boxes represent tasks carried out by international organizations to fulfill the Dayton Agreement. As one can see



in Figure 2, the international organizations often work individually, and do not have the organizational structure present to foster cooperation easily.

Comparison between Actor Organization Structures

It is clear that many more organizations are present in Bosnia than in Japan. The Japan organizational structure is a hierarchy that functions from the top down, whereas the Bosnia organizational structure extends laterally to include many international organizations. The greatest difference stems from diffusion of executive authority beyond one organization in Bosnia, while in Japan all of the command structure ultimately falls under the SCAP. Between the organizational structures of the peace/state building projects, there are parallels between the offices and organizations. For example, the Government section from the Japan Occupation parallels with the role of the OHR to assist in the work of the central government. It is also not clear in the Bosnian peace building organization how the two pillars of security and civilian implementation are supposed to interact to fulfill the tenets of Dayton, and the separation between the military and civilian aspects generally made coordinated actions difficult (Belloni 2007). The separation of the military and civilian components originates with a difference of opinions between the U.S. and European states. The U.S. handled the military aspects through NATO, and the Europeans were determined to manage the civilian implementation processes leading to a split in the peace/state building apparatus (Belloni 2007).

Clearly, this comparison has shown that the Japan and Bosnia cases differ in both the number and types of actors involved in their state building processes. In Japan, there was a single organization running the state building project, the U.S. military through the Supreme Commander of Allied Powers; whereas in Bosnia there were a multitude of organizations in

charge of various aspects of the state building project with a distinct separation between military and civilian organizations.

III. The Constitution Making Process

Both of these factors, the war type and the actors involved, effect the constitution-making process significantly. The greatest differences between the constitution making-processes themselves in the cases of Japan and Bosnia were the timing of the process and the involvement of locals in the process. In Japan, the Constitution was made after the surrender of Japan, during the Occupation. Whereas in the Bosnian case the Constitution was made as part of the peace agreement to end the war. For Bosnia, the constitution existed when the peace/state-building exercises began. For Japan no modern constitution existed at the outset of the state building project, and one of the major directives included the involvement of the Japanese in the creation of government. In the case of Bosnia, the constitution-making process did not include local Bosnians.

Japan

In Japan, constitution making was an iterative process between SCAP and the existing Japanese leadership, and after the first election, the elected Japanese representatives. The Constitution making process in Japan was an example of prioritizing structural ownership, for domestic actors were involved in the design of the state. Immediately after the war, the Cabinet of Naruhiko Higashikuni operated the remaining system of governance and responded to the SCAP's orders, yet the Higashikuni Cabinet had no intention to revise the Constitution. Higashikuni as the Prime Minister was representative of the traditional ways the Meiji

government had operated as Naruhiko Higashikuni himself was a Japanese Imperial Prince and a career officer in the Imperial Japanese Army.

In response to the Higashikuni cabinet's inability to move forward with the directives from SCAP, SCAP issued the Directive of Freedom on October 4, 1945, in which restrictions on political, civilian and religious freedoms had to be removed in order to guarantee freedom of thought, belief, assembly and speech. In addition, this directive led to the dismissal of 4,000 people, and the Higashikuni Cabinet resigned the following day (戦争終結と憲法改正の始動 – “End of War and Start of Constitutional Amendment” 2021).

The Shidehara Cabinet was then appointed to replace the Higashikuni Cabinet because of Kijuro Shidehara's pro-American reputation, and passivism during his role as Foreign Minister. Shidehara was also connected to a powerful company or zaibatsu, Mitsubishi, through his wife, who was part of the Mitsubishi family.⁴ Shidehara was not royal like Higashikuni, but had served in a powerful role as the foreign minister previously, and clearly had connections to power through his marriage. Under the Shidehara Cabinet, a Constitutional Issues Investigation Committee was formed and the project of editing the Constitution began. The Constitutional Issues Investigation Committee was first established in order to research the prospect of constitutional amendment. The Committee included members of the Shidehara Cabinet and was focused at first on academic research, and then transitioned to the inclusion of directives from SCAP, ideas from parliament and public opinion. The Committee produced a Constitutional

⁴ Zaibatsu refers to a large Japanese business conglomerate. Many zaibatsu supported war efforts, and during the early years of the occupation MacArthur and SCAP dissolved zaibatsu.

reform outline, which summarized the aspects of the Constitution that needed to be corrected, that was submitted to SCAP on February 8, 1946 (戦争終結と憲法改正の始動 – “End of War and Start of Constitutional Amendment” 2021).

After some back and forth with SCAP after the initial submission of the Constitutional reform outline, U.S. policy directives that were not included were added into the Constitution in Cabinet meetings on February 22 and 27, 1946. Two high ranking officials in the Legislation Bureau submitted the new draft on March 2, 1946, and then had participated in all-night negotiations with U.S. representatives concerning the Constitution that resulted in the final draft of the document on March 6, 1946 (戦争終結と憲法改正の始動 – “End of War and Start of Constitutional Amendment” 2021).

The new draft of the Constitution had been published for the public to view. Every major party, except the Communists, approved of the new Constitution and it was even supported by the Emperor, Cabinet and Supreme Commander (Foreign Relations of the United States, 1946, Volume VIII, The Far East, Document 164).

The first election in occupied Japan was held in April 1946, and after the new legislature had been seated, and deliberation and edits occurred for about seven months, the Constitution passed in October 1946 (Foreign Relations of the United States, 1946, Volume VIII, The Far East, Document 260). On May 3, 1947, the new post-war Japanese Constitution went into effect. The entirety of the constitution making process took about one and half years because of the inclusion of the Japanese leadership and citizenry through polling, open publishing and revisions

from the Japanese Cabinet and legislature. General MacArthur summarized the constitution making process in his memoir:

As can be seen, more than a year and a half had gone by since work on the new document had started, and during that whole long period it had been scrutinized by the people of Japan. I know of no similar important document that ever received so much attention and open debate, including our own Constitution (MacArthur 1964:301).

Japan's constitution-making process focused on structural ownership from the Japanese leadership by including Japanese leadership in the drafting and editing stages and then the elected representatives in the final edits. The Japanese constitution-making process demonstrates domestic actors being involved in the structuring and planning of state-building within Japan. The structural ownership that was established during this process would be fundamental to the ability of the domestic population to 'own' the state-building process. Perhaps without establishing structural ownership, Japan and the Japanese people could have felt more disillusioned with the state-building process and unwilling to adopt the new constitution or any following governance structure.

While the principles of the Constitution were imposed from above, the interaction between Occupiers and domestic actors offered a kind of partnership that laid the groundwork for the rest of the state-building project.

Bosnia

As for the case of Bosnia, the constitution making process was part of the peace process. Therefore, the imposition of the Constitution employed functional ownership because the expectation of the IC was for the Bosnian domestic actors to comply with the tenets within the Constitution without their involvement in the drafting of the document. U.S. Assistant Secretary

of State Richard Holbrooke was the lead mediator and U.S. negotiator because of his role in the region as the Assistant Secretary of State for Europe and Eurasian Affairs and his later role of U.S. Special Envoy to the Balkans. There were three leaders in the negotiations each representing their own political ethno-nationalist group in the conflict: Slobodan Milosevic represented the Bosnian Serbs and Serbian interests, Franjo Tudjman represented Bosnian Croats and Croatian interests and Alija Izetbegovic represented the Government of Bosnia and the Bosniaks.⁵ Both Milosevic and Tudjman were leaders of external states, Serbia and Croatia respectively, but were representing their ethno-nationalist population within Bosnia in the peace negotiations. Beyond the leaders, there were also representatives from the Contact Group, the EU and the OSCE present.⁶ Notably, there were no representatives from the UN (Greenberg, Barton, and McGuinness 2000).

The negotiations were held on Wright-Patterson Air Force Base in Dayton, Ohio, for a variety of reasons, including American leverage, high level secrecy and security and lack of media centers. Holbrooke emphasized that a United States-based negotiation would give himself and the American negotiators leverage to make a deal (Greenberg, Barton, and McGuinness 2000). Additionally, the setting of an Air Force base emphasized the role of the military in the peace process. The secrecy and lack of media centers were to avoid Balkan leaders from appealing to the media to sway a deal.

⁵ Milosevic had to be granted permission to operate on behalf of the Bosnian Serbs including mediation of the Serb Orthodox Patriarch.

⁶ The Contact Group formed in response to the war in Bosnia and consisted of the United States, the United Kingdom, France, Germany, Italy and Russia.

The negotiations took place from the 1st through the 21st of November 1995. One of the most complex and difficult issues to solve was that of territory and the map of Bosnia-Herzegovina. The Bosnian Serbs had once gained control of about 75 percent of country, but in the territorial arrangement they would be awarded 49 percent of the country, with 51 percent going to the Bosniaks and Bosnian Croats. Tudjman and Izetbegovic struggled with the notion that the Bosnian Serbs were being rewarded areas that they had ethnically cleansed, rather than being punished for their violent acts. Upon agreeing to the map, Izetbegovic noted, "It is not a just peace, but my people need peace" (Greenberg, Barton, and McGuinness 2000:74).

It is important to note the undemocratic origins of the Constitution. There was no opportunity for the constituent peoples of Bosnia to participate beyond the war-time leadership present. There was no ratification by the legislature necessary for the document to go into effect. Rather, the signatures of the leaders present represented the adoption of the new constitution (Yee 1996). The Dayton Agreement, the peace aspects and the Constitution would be imposed upon the entirety of the Bosnian population, without the say of many domestic leaders or the populace generally. There was no allocation of structural ownership to the Bosnians, especially considering that two of the leaders were from states external to Bosnia. Largely, the leadership involved with the crafting of the peace agreement and the Constitution would not be the ones having to live with the consequences.

Clearly, the emphasis in this constitution-making process was less on the Constitution and more on securing peace in the region. The constitution-making process was largely completed by U.S. and international representatives to work comprehensively within the Dayton Agreement largely. The result was a highly internationalized Constitution.

While both Japan and Bosnia have internationalized constitutions, the internationalization process is extremely different. In the case of Japan, there were standards that had to be met and adjustments made, but many decisions were handed over to the Japanese representatives themselves. In the case of Bosnia, the entire constitution was written as part of a peace agreement and then handed to the Bosnian people and imposed through NATO, the OHR, the OSCE and various other international organizations. The greatest difference can be summarized with the approaches to ownership, in the case of Japan, structural ownership was emphasized, while in the case of Bosnia, functional ownership was emphasized. In Japan, the IC allowed Japan to contribute to structuring its own society, while in Bosnia the IC expected Bosnians to operate within the structure that was created for them. Within the Japan state-building project there was great emphasis on Japanese built democracy, but in Bosnia the emphasis was on peace.

IV. Constitutional Content

This section highlights key details that make the Japanese and Bosnian constitutions both internationalized and unique to their own country. Both Constitutions included principles to create a democratic governance structure and protections for human rights, but they also include other principles unique to the war experience of the country and the actors involved. In the case of Japan, the distinctive parts of the Japanese Constitution include the role of the Emperor, the renunciation of war and the governance structure. In the case of Bosnia, the distinctive parts of the constitution are the two entities, internationally recognized human rights, right to return for refugees, and a distinct governance structure with a weak central state.

Japan

After the preamble of the Japanese Constitution, the first chapter is specifically about the station of the Emperor. In the former Meiji Constitution of 1889, the Emperor is considered “sacred and inviolable,” as well as exercises the role as the head of the Empire. The Emperor had the ability to exercise legislative power with the consent of the Diet, issue Imperial ordinances in the place of law when the Diet was not in session, and command the military. Essentially, the Emperor was an all-powerful role given the powers of the Meiji Constitution.

In the new Constitution, the Emperor acted as a symbol of the state. The Emperor now required the advice and approval of the Cabinet for any acts he wished to take. Additionally, the powers of the Emperor are specifically outlined in the new Constitution, and the Emperor only performs acts specifically mentioned. Some of the acts included promulgation of amendments of the Constitution, laws, cabinet orders and treaties; convocation of the Diet; proclamation of general election of members of the Diet; receiving foreign ambassadors and ministers and performance of ceremonial functions. All of these acts had to be done with the advice and approval of the Cabinet, but all in all the role of the Emperor became highly ceremonial with power stemming from elected officials rather than from Emperor, as the Meiji Constitution had outlined the station of the Emperor.

The second unique part of the Japanese Constitution was the renunciation of war. One of the key tenets of the Potsdam Declaration was the demilitarization of Japan, which was fulfilled through a War Clause in the new Japanese Constitution. The Constitution specifically stated,

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized (日本国憲法 [Constitution]).

Because of the militancy of Japan throughout the Second World War, the Allies wished to revoke war power from Japan. Additionally, the removal of power from the Emperor played into this tenet, for the Emperor was the commander of the military and therefore the leader that pushed on throughout the Second World War.

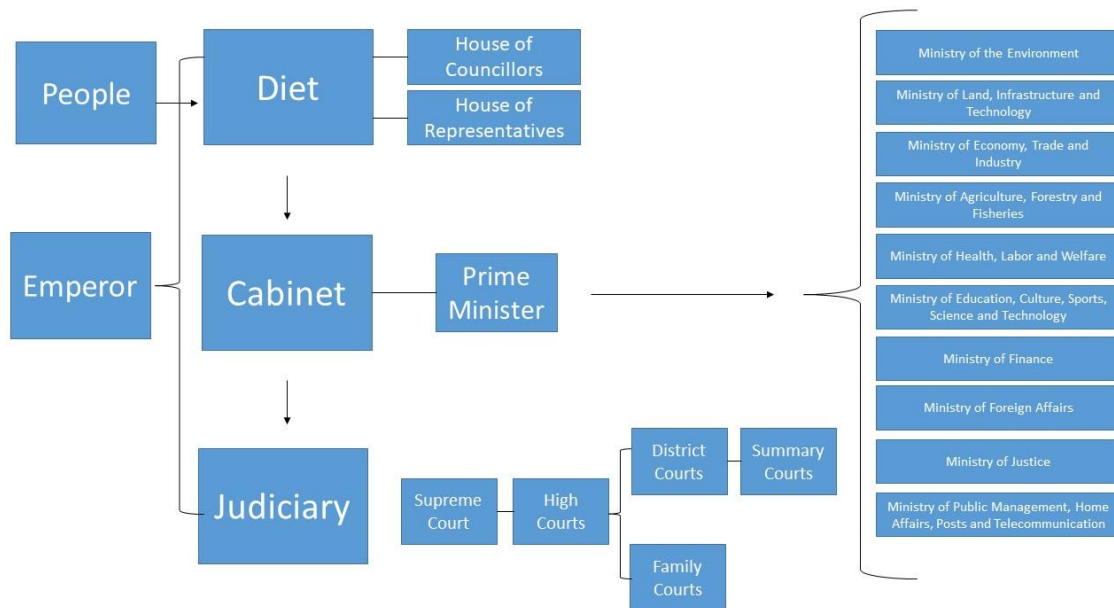
Lastly, the new governance structure of Japan was outlined in the new Japanese Constitution. Japan became a parliamentary constitutional monarchy, made up of three branches: legislative, executive and judicial. The Emperor became the head of state, but had no governmental powers. The chief executive was the Prime Minister, who was selected by the Diet and then appointed to office by the Emperor. The rest of the Executive branch was made up of the Cabinet, which was composed of various ministers selected by the Prime Minister of Japan usually from the Diet.

The legislative branch, the Diet, consisted of two houses.⁷ The upper house is called the House of Councilors, and the lower house is the House of Representatives. The members of the Diet are directly elected by the Japanese people.

⁷ Diet is pronounced “Dee-it”

In the Judicial branch, the highest court was the Supreme Court, and the other courts are district courts, high courts, family courts and summary courts. Judges are appointed by the cabinet.

Figure 2: Japanese Government Structure



Bosnia-Herzegovina

Bosnia-Herzegovina (BiH) did not have any pre-war boundaries between ethnic groups within the country. The entities acknowledged in the Constitution have characteristics that make them close to states themselves, like the existence of separate administrations and individual constitutions, entity based armies, the responsibility to raise entity revenue to finance their own activities, and the ability to maintain special parallel relationships with neighboring states, like Croatia and Serbia (Belloni 2007; Caplan 2004). The recognition of the two entities legitimized the consequences of the war by dividing constituent peoples geographically (Yee 1996). The entities were separated by an Inter-Entity Boundary Line (IEBL), which divided the country

along the 51-49 per cent proposal originating from previous peace negotiations before Dayton. BiH's borders as a whole were preserved, but internally the country was divided among the political units where ethnic groups were predominant (Belloni 2007).

While geographic separation was built into the Constitution of BiH, so was an emphasis on human rights. The Constitution of BiH included multiple points on human rights, specifically the necessity to adopt the highest level of internationally recognized human rights and fundamental freedoms. Within the provision for human rights, twenty plus international human rights instruments were built into the legal framework of the country, including human rights courts, ombudspersons and human rights monitoring missions (Belloni 2007). Because of the atrocities that occurred during the war, including the 1995 Srebrenica genocide, the international powers felt it necessary to provide international standards for human rights within the state Constitution. The inclusion of international law within a state Constitution begs the question about the true sovereignty of a state.

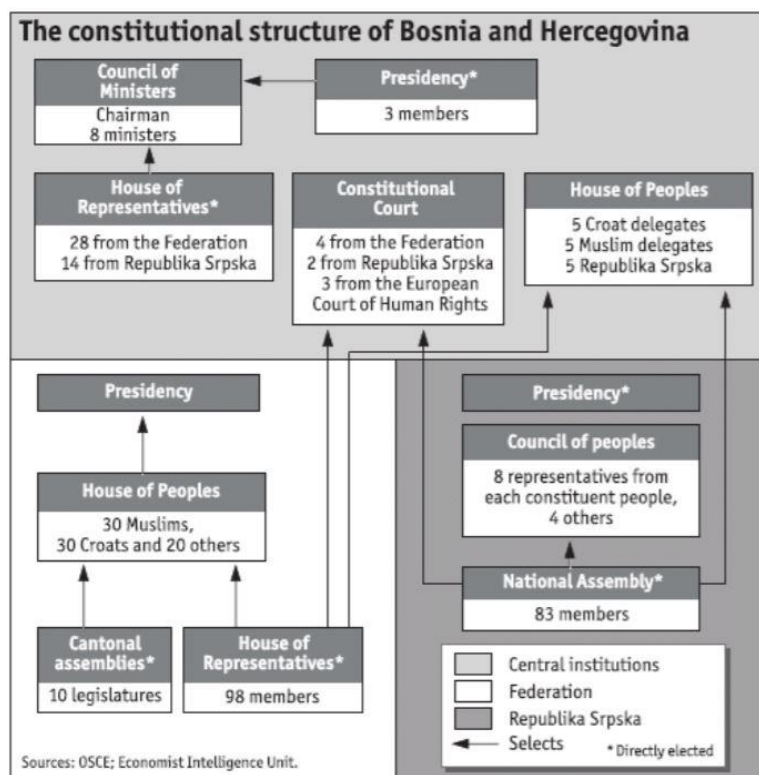
The right for all refugees and displaced person to freely return to their pre-war homes functioned as a way to promote justice for those forced out of their prior homes during the conflict. The Constitution enumerated that refugees would have property restored to them that was taken after hostilities began in 1991 and be compensated for any property that could not be restored to them. The right to return was a distinct legacy of the war in Bosnia because of the number of people who fled their homes during the conflict.

The governance structure outlined in the Constitution of BiH created an extremely weak central state, with more powerful entities. Within the entity constitutions, cantonal and municipal governments are created in order to protect the rights of all of the constituent peoples and center

power on political communities in hope of power-sharing agreements between them (Chandler 2000). Dayton created a complex structure with an abundance of power-sharing at the central state level, and self-governing abilities at the entity and lower level political territories. As noted by Belloni, “[the Dayton Agreement] created a complex political structure composed of one state, two entities, three peoples, four million citizens and five layers of governance led by fourteen prime ministers and governments, making Bosnia the state with the highest number of presidents, prime ministers and ministers in the entire world” (Belloni 2007:44).

The Constitution enumerated a few powers to the central government, including foreign relations, inter-entity relations and control over the national economy. The new Constitution established a Parliamentary Assembly (Legislature), Collective Presidency and Council of Ministers (Executive) and Constitutional Court (Judiciary) (Yee 1996). Additionally, each entity also has its own executive, legislative and judicial branches. Any governmental powers not expressly allocated to central states institutions were granted to entity-level governments. The entities were the Federation of Bosnia and Herzegovina that was run by the Bosniaks and Bosnian Croats and the Republika Srpska that was run by the Bosnian Serbs. See figure four, for a chart depicting the constitutional structure of BiH.

Figure 3: Constitutional Structure of BiH



State-level Governance Structure

Bosnia's executive branch includes the Presidency and the Council of Ministers. The collective presidency consists of one Bosniak and one Croat member, each elected in the Federation of Bosnia and Herzegovina, and one Serb member elected from the RS. The Presidency is responsible for electing the Chair of the Council of Ministers, which will then be responsible for carrying out the policies and decisions of BiH. The Presidency has the power to conduct foreign policy, appoint ambassadors, represent BiH internationally, ratify treaties and execute decisions from the Parliamentary Assembly.

Bosnia's legislature is a bicameral Parliamentary Assembly. The House of Peoples has fifteen members with quotas for five members from each ethnic group; five Croats and five Bosniaks, selected from the Federation, and five Bosnian Serbs chosen from the RS. Members of the House of Peoples are selected by the two entity-level legislatures. The House of Representatives has forty two members, which are divided by entity 28 representatives comes from the Federation of Bosnia and Herzegovina, and 14 come from the Republika Srpska. Members of the House of Representatives are elected directly through proportional representation from the two entities. The role of the Parliamentary Assembly is to enact legislation, approve budgets proposed from the Presidency for the operation of state institutions and ratify treaties (Yee 1996). An important power enumerated in the Constitution allows any ethnic group to declare legislation as "destructive of a vital interest," essentially acting as a veto power if the majority of delegates from that ethnic group agree (Belloni 2007).

Bosnia's Constitutional Court is the highest court in the land, and it is made up of nine members. Four members are appointed from the Federation (two Bosniaks and two Croats), two members appointed from the RS, and three members, who cannot be citizens of BiH or any neighboring state, are selected by the European Court of Human Rights. The Constitutional Court is in charge of handling disputes between the entities, between one entity and the central state, or between state institutions.

The Bosnian Constitution is contradictory in how it seeks to reconcile a previously warring population through institutionalizing ethno-national divisions among the population, and at the same time preaching cooperation and power-sharing between the constituent peoples. The following sections address the governance structures of the entities.

The Federation of Bosnia and Herzegovina

Federation is representative of the two constituent peoples who reside within the Federation. The executive branch is headed by a Bosniak and Croat President and Vice President. The Federation Parliament includes two houses. The representatives in the House of Peoples are selected by Canton Assemblies, while the Federation House of Representatives is made up of 140 directly elected members (Chandler 2000).

Within the Federation of Bosnia and Herzegovina there are ten cantons. Five of the cantons have a Bosniak majority, three have a Bosnian Croat majority and the other two are ethnically mixed. Within each canton there is a government headed by a prime minister, who has a cabinet. There are also cantonal agencies, ministries and cantonal-specific services like education, police and courts.

Cantons are made up of municipalities, which are the smallest administrative unit in the Bosnian political system. Within ethnically mixed cantons, municipalities become the main places of ethnic power. There are 79 municipalities grouped together across the ten cantons. Each municipality tends to consist of an urban area with surrounding villages, and each has a council and a municipality head.

Republika Srpska (RS)

The Republika Srpska has executive, legislative and judicial branches. The head of the executive branch is a single president with two vice presidents from different constituent peoples. The legislative branch is made up of the National Assembly and the Council of Peoples. The National Assembly has 83 directly elected deputies, and at least four members of one constituent people must be represented with the National Assembly. The Council of Peoples has

eight members from each of the constituent peoples and four from other groups; these members are elected by caucus in the National Assembly. Below the entity level government, the RS also has municipalities with their own with councils and a municipality head.

The decentralization of Bosnia was supposed to protect the rights of constituent peoples and encourage power-sharing and cooperation because of the safety that was present locally. Yet, in reality the divisions that exist throughout Bosnia institutionalize divisions through the ethnic principles of state organization.

Table 2: Comparing Constitutional Content between Japan and Bosnia

Characteristics from Constitutions	Japan	Bosnia
Based on the will of the people	✓	
Internationalized Constitution	✓	✓
Parliamentary System	✓	✓
Bicameral Legislature	✓	✓
Three Branches of Government	✓	✓
Representative Democracy	✓	✓
Constitutional Monarchy	✓	
Federal Republic		✓
Weak Central State		✓

The Constitution of Bosnia is clearly internationalized in ways that the Japanese Constitution is not. In a side to side comparison of the content of the Bosnian and Japanese Constitutions, there are many structural similarities, but there also specific differences. Both are

democracies, and maintain parliamentary systems with bicameral legislatures. Yet, Japan is a Constitutional Monarchy and Bosnia is a Federal Republic. Japan's constitution outlines the ceremonial role of an Emperor and relinquishes powers of war. Bosnia's constitution includes international intervention through the OHR, Constitutional Court and International Law.

V. Conclusion

The post-conflict constitution-making process was greatly influenced by the context of the conflict for each country and the actors involved in the constitution-making process. The final constitutions of both Japan and Bosnia were highly internationalized due to the international involvement in their constitution making process.

The constitution-making processes put a spotlight on how state-builders viewed functional and structural ownership. By including Japanese domestic actors in the planning and structural project of constitution-making there was clear evidence of an emphasis placed on structural ownership. Local ownership stemmed from the Potsdam Declaration that emphasized the government structure coming from the will of the people.

In Bosnia, the main goal was to end the war, and the Constitution was a means of keeping the peace after war-time and getting the parties to agree to the peace. For that reason, international interveners imposed the Bosnian Constitution without the input of the population in any form, and emphasized functional ownership such that domestic actors would operate within the structure created. The opportunity for structural ownership was presumably not offered to the Bosnians because of the need to quickly create peace, and keep the peace. Offering structural ownership to previously warring communities could have led to an inability to compromise or a re-ignition of the conflict. The emphasis in the Bosnian Constitution-making process and

Constitution was on functional ownership of the implementation process on the ground. These differences will become clearer in the evaluation of the inaugural elections in both cases, and how individual state-building processes transitioned throughout their processes.

Chapter Five:

Local Ownership after the Constitution

I now explore how characteristics from the constitution-making processes affected the concept of local ownership after the implementation of the constitution. I argue that a democratic, iterative constitution-making process, as described by the previous chapter, is a function of structural ownership. Without providing a path to structural ownership, simple functional ownership can lead to the rejection of principles imposed from above.

The cases of Japan and Bosnia clearly differ in the inclusion of the local population in their constitution making processes and constitutional content. The results of the constitution-making process and the extent of local ownership were tested by the inaugural elections held in a state. Elections are an integral part of any democracy, and both Japanese and Bosnian Constitutions include elections within their political structures. One great difference between the inaugural elections stems from the fact that Japan's inaugural elections took place before the Constitution was enacted, while Bosnia's inaugural elections took place after the Constitution was in place.

After discussions of elections, I touch on changes that occurred in both cases of state-building that altered the path of the project away from the initial projects' goals. For Japan, there was a reversal of the prior state-building objectives, for Bosnia there was a shift in the power structure when the OHR was given more power to accomplish more aspects of the Bosnian peace- and state-building projects.

I. Inaugural Elections

In Japan, elections were not specifically enumerated in the Potsdam declaration, nor was a time frame noted, but the inaugural elections in Japan took place about eight months period after the occupation began. In Bosnia, free, fair and democratic elections were one of the tenets of the Dayton Agreement. Annex Three of the Dayton Agreement included the provisions that the Organization for Security and Cooperation in Europe (OSCE) would be responsible for the elections, and that the elections themselves would take place within six to nine months after the Dayton Agreement was signed into force (Dayton Peace Agreement Annex 3, November 21, 1995). Both inaugural elections took place in a similar time frame after the individual state/peace building project began, but varied in whether they came before or after the enactment of the Constitution. Participation in elections is a demonstration of functional ownership.

Japan

One tenet of the Potsdam Declaration was the formation of democracy based on the will of the Japanese people (Potsdam Declaration, July 26, 1945). In January 1946, in a memo to President Truman, Acting Political Advisor George Atcheson described all of the basic ‘preparatory actions’ for the democratization of Japan having been completed, including the purge of the bureaucracy, arrest of major war criminals, mandates for freedom of speech, press and assembly and disestablishment of Shinto to name a couple. Atcheson also noted the establishment of four new post-war political parties: the Progressives, the Liberals, the Social Democrats and the Communists (Foreign Relations of the United States, 1946, Volume VIII, The Far East, Document 110).

On April 10, 1946, Japan held its first election since the war. Turnout was 72 percent of all eligible voters, and women were allowed to vote for the first time. The first election demonstrated that the majority of Japanese people voted conservatively, but the great number of votes for the Social Democrats demonstrated the desire for change within the population since the party previously had received far less votes in pre-war elections (Foreign Relations of the United States, 1946, Volume VIII, The Far East, Document 184). Formerly there had only been lawyers and upper class citizens in the Diet, but after the inaugural elections in April there were younger people, teachers, farmers and 38 women were elected (MacArthur 1964). There were some criticisms that occurred concerning incomplete registration lists throughout Japan, but election official negligence was the recorded reason for the errors (Foreign Relations of the United States, 1946, Volume VIII, The Far East, Document 184).

The high turnout in first elections in Japan demonstrated that the Japanese population was largely accepting of the new democratic principles of the country. Prior to the election, Japan's constitution-making process had been dominated by Japanese elites and representatives who had not been purged, and were selected to work with the U.S. After the election, the newly elected representatives selected by a broad majority of the electorate were integral to the final edits and approval of the Constitution that went into force on May 3, 1947.

Bosnia

Annex Three of the Dayton Accords was dedicated to outlining the necessary conditions for democratic elections. The parties needed to ensure that a politically neutral environment existed, and that the right to vote without intimidation or fear as well as in secret would be protected. Additionally, freedom of expression and freedom of the press was supposed to help

encourage freedom of association and freedom of movement. The OSCE was tasked with certifying the conditions for the elections and providing assistance to the parties if necessary. The OSCE was also assigned to supervise the elections themselves on the state, entity and cantonal/municipal levels. According to the Agreement, the elections were to take place between six and nine months after the signing of the Dayton Agreement (The General Framework for Peace in Bosnia and Herzegovina, Annex 3, November 21, 1995).

Prior to the election, the environment had not been made neutral. For example, there was evidence of fear-mongering from the Croat Democratic Party (HDZ) materials noting that the election determined the “survival of their nation,” and actions like these were most likely occurring within each of the ethno-nationalist political parties (International Crisis Group 1996: 20). There were even explosives found where a meeting was scheduled for the Socialist Party of Republika Srpska. Two different opposition leaders to the ruling Bosniak party, the Party of Democratic Action (SDA) were physically assaulted before the election (International Crisis Group 1996). It was clear that Bosnia was not fostering the neutral political environment necessary for free and fair democratic elections.

The first elections in the post-war period took place on September 14, 1996. According to the International Crisis Group, neither entity had met the minimum requirements for elections. Because of the failure to begin repatriation and reintegration of refugees, handover indicted war criminals and remove roadblocks to freedom of movement and expression, the state of Bosnia was not prepared to hold elections based on the requirements listed in the Dayton Agreement. Holding elections would solidify the ethnic divides that were still present, and largely halt any

efforts to reintegrate once the election results return power to the ethno-nationalist centered political parties (International Crisis Group 1996).

On Election Day, thousands of voters were either disenfranchised through technical errors with voter registration or for fear of crossing the Inter-Entity Boundary line to vote. Polling places were calm due to the security preparations that prepared, and because the ruling political parties were looking forward to their power being restored officially (International Crisis Group 1996).

The results of the election demonstrated that nationalist parties triumphed. For the tripartite presidency, Bosniak Alija Izetbegovic (SDA) and Croat Kresimir Zubak (HDZ) won more than 80 per cent of the vote for their roles. The Serb member, Momcilo Krajisnik (SDS), had a less overwhelming victory. Through the certification process of the election, the Coordinator for International Monitoring concluded that Bosnia having just emerged from a war, and “fulfilling varying degrees” of the conditions of the Dayton Agreement made it difficult to assess the extent to which the elections were free and fair (International Crisis Group 1996).

Based on these observations of the first election in post-war Bosnia, the locals did not take functional ownership in the prescribed way the international community had hoped concerning the protocols of the Dayton Agreement set up in preparation for the election, but rather locals did take ownership of the election itself while ignoring the standards of Dayton. By using fear-mongering and hateful rhetoric, the political parties largely rejected the pre-election standards that the Dayton Agreement had created, in order to run election campaigns in the same way they were familiar with from pre-war and war times. In sum, this does not mean there is no local ownership by the Bosnians, but rather there was ownership of the process in a way that was

not expected or wanted by the international community. The parties used the election to legitimize their own power through international rules.

While the election in Japan began to cement democratic norms in the minds of Japanese citizens, the Bosnian election legitimized the role of nationalist political parties that had been the main perpetrators of the war. Both countries took functional ownership of the elections, but only Japan took ownership in the way the international community wanted the country to do so. Bosnians still demonstrated functional ownership despite the fact it was in a different way than the international community planned. As for control over the political planning aspect of structural ownership, Bosnians did not have much if any input into the planning of the first elections since that duty was allocated to the OSCE. As for Japan, it is not clearly explained in government reports how the first election was managed, but it is likely that it was implemented through the Home Ministry by the SCAP. The Home Ministry was an organ of the Japanese cabinet that was largely in charge of internal affairs from the Meiji period through the occupation, until it was reorganized after the enactment of the new constitution (Duus 1976). Therefore, both domestic populations took functional ownership of their inaugural elections, but they diverged in meeting the expectations of the international community.

Election update

Within Annex Three of the Dayton Agreement, there were specific plans to transfer election management to the local Bosnians. In October 2002, Bosnians organized and administered their first general election. An OSCE mission observer noted that there were no significant procedural failures during the election planning and implementation process (International Crisis Group

2003). This power transfer suggests structural and functional ownership of the electoral process. Yet, the problem of nationalist parties dominating still existed.

II. Transitions in implementation styles in state-building projects

Beyond elections which took place shortly after the state building projects began, there were shifts in the implementation styles of state-building in both the cases of Bosnia and Japan that impacted the potential for local ownership. In Bosnia, this transition happened with the introduction of the Bonn Powers to the OHR, and in the case of Japan, the transition is captured by the rising tensions of the emerging Cold War and changing priorities for the role of Japan.

Japan

One of the central tenets of the Occupation in Japan was demilitarization, but when threats begin emerging from the Soviet Union, the American occupation forces recalibrated the rules of the Occupation. The Marshall Plan, which was meant to supply Europe with foreign aid after World War II, also led to the envisioning of independent global zones allied with the United States against the Soviet Union, including the United States, a restored Germany and Japan (Schaller 1987). Germany and Japan would become regional centers of production and trade, and form a linkage of anti-Communist states (Schaller 1987).

Economic recovery was not an immediate priority of occupation plans, so focusing on production and trade was a pivot away from Potsdam. With the new plan of making Japan into a regional production center for the war against the Soviet Union, George Kennan, an American diplomat known for his containment policy towards the Soviet Union, was sent to Tokyo in 1948 by Secretary of State Marshall to signal a change in MacArthur's unilateral power and advise policy plans to accelerate Japanese recovery through economic reform. Kennan recommended a

‘reverse course’ for Japan. The theme of Kennan’s reverse course for Japan was relaxing pressure and undoing policies from the early Occupation period. Kennan suggested changes like removing the antimonopoly and reparations programs that had been agenda items in the Occupation from the start. Kennan believed that the Japanese would reject the idealistic liberal reforms that took place under MacArthur between 1945 and 1947, and instead emphasized a need to breed traditional conservative political groups to protect Japan from Communism. Kennan wished to give as much authority as possible to the Japanese government and even to establish a small army or central police force to combat potential Japanese subversion, which was starkly against the original objectives of demilitarization (Schaller 1987).

The transition in the state-building policy towards Japan was a reversal of the previous two years and a large pivot away from the goals of the original occupation. The next step for the United States was to transform Japan into a piece of the U.S.’s global military architecture to combat the rising threat of the Soviet Union. The transition from the policies of MacArthur to Kennan represented a great hand-off to the Japanese government. In the beginning of the occupation, the SCAP structure acted as a dominant force. After the Kennan trip, the SCAP began transitioning into more of a partnership with the Japanese domestic actors especially through the government structure. With the policies of Kennan, the political rule of the country was handed over to the Japanese as the Americans were concerned with transforming Japan into a self-functioning and productive state that could be of use to the American military structure against possible confrontations with the Soviet Union. Kennan’s policies emphasized America as an ally and a benefactor to Japan, rather than an occupying, ruling force. Kennan’s policies accelerated the inevitable outcome of Japanese ownership, both functional and structural, over

their own political powers in a largely unobserved way that had not occurred since before the Occupation.

Bosnia

The majority of the Dayton Agreement contained the framework for peace building efforts, which can be defined by efforts to eliminate violence and create the conditions for a stable peace (Barnett, Fang, and Zürcher 2014). Between 1995 and 1997, the international organizations present in Bosnia performed the roles they were tasked with achieving from Dayton, focusing on the implementation of peace. The OHR played an advisory role for the most part, consulting and settling disputes as needed. High Representative Paddy Ashdown later noted that Dayton was “designed to end a war, not to build a country” (International Crisis Group 2003). Yet, in late 1997, the role of the OHR was strengthened by the introduction of the Bonn Powers. The creation of the Bonn Powers transitioned the capacity building project in Bosnia from peace-building to a more active role in state-building. There were two clear stages of the role of the OHR in Bosnia, the first can be described as the immediate post-war period where the OHR was focused on implementing the terms of the Dayton Agreement. The second stage was a departure from the strict adherence to Dayton, and instead was focused on the EU Accession process. After the Thessaloniki European Council summit in June 2003, Bosnia and Herzegovina was identified as a potential candidate for EU membership, and under High Representative Paddy Ashdown the state-building priorities shifted to create a more centralized state and meet other goals to fulfill the criteria to join the EU.

The power of the OHR increased in May 1997, when the Peace Implementation Council (PIC) allowed the OHR to terminate violent broadcasts on public media. SFOR, for the first time

moved beyond peacekeeping to active intervention, and went as far as to seize the public television transmitter towers that the Republika Srpska (RS) controlled, after which the OHR demanded the resignation from the entirety of the management. The success of the intervention led the PIC to create new powers for the OHR to push through roadblocks to creating a centralized state through abilities to implement institutional reform, create legislation and remove elected officials at will in order to fulfill the tenets of Dayton (Knaus and Martin 2003).

The Bonn Powers were used to push through ‘log-jams’ and make decisions in conflicts that were important to the functioning of the state that were not quickly or easily solved due to disagreement among political groups. In the early stages, the Bonn Powers were not used often. But, after the progress that was made wielding the Bonn Powers, the powers began to be used more often as a means to build the state. Carlos Westendorp (1997-1999) was the first to handle the Bonn Powers and averaged about four actions per month (Knaus and Martin 2003). Notably, Westendorp imposed citizenship and passport laws, chose the design of the common currency and pushed authorities to decide on a common license plate (International Crisis Group 1998).

Paddy Ashdown (2002 – 2006) was the most visible High Representative, who made his priorities clear: rule of law, economic reform, responsibility in public office and rationalization of government. Ashdown used the Bonn Powers to restructure the entire judicial system in 2002, requiring every judge to resign and reapply for their positions. By the end of 2002, more than one hundred officials had been dismissed from their post for various reasons (Knaus and Martin 2003). Ashdown also created a committee of businesspeople to identify obstacles to doing business in BiH, which was followed by the removal of 49 laws or regulations. Ashdown attempted to shift the balance of power by establishing internationally-chaired working parties to

create plans to further centralize the state of BiH through projects like establishing a state-level customs service, introducing a state-level value added tax (VAT), bringing entity-level armies under the state-level civilian command structure and creating a state intelligence agency (International Crisis Group 2003). Additionally, OHR imposed a law changing the structure of the Council of Ministers. The law increased the number of ministries to eight from six, created a permanent chairman and provided for a single deputy minister in each ministry. OHR then claimed the right to vet ministers on the state level, but also in the entity and cantonal governments. Already, the OHR could remove officials from their posts, but now the OHR had a say in who was first appointed to positions (International Crisis Group 2003). Paddy Ashdown made hefty use of the Bonn Powers, and clocked in at about 14 acts per month (Knaus and Martin 2003). As mentioned previously, this transition and greater use of the Bonn Powers by Paddy Ashdown was used in hopes of building a state to meet the criteria of the European Union, which became the ultimate exit strategy of the International Community.

The Bonn Powers made Bosnia into a pseudo-protectorate, as the OHR governed by decree on the state level and by imposing pressure on the entities. Meanwhile, entity, cantonal and municipal governments still retained relative power over their communities. The existence of the OHR and its new role with the use of Bonn Powers was in direct contradiction with the objective of fostering local structural ownership but worked directly to accomplish the goals of building a central state.

One could argue that awarding greater power to the OHR was a way to overcome the weak institutional structure that was set up by the Dayton Agreement. The structure from Dayton created a political system that favored ethno-nationalist parties and required them to operate on

consensus that was often out of reach. Bosnians could not operate in an efficient, responsible manner, hence the need for a powerful figure to push through the conflicts (International Crisis Group 1998). Yet, the instilling of the Bonn Powers to the OHR gave ethno-nationalist leadership an excuse not to cooperate. They could depend on the OHR to manage and build the state, while the leadership could focus on scoring political points.

The Bonn Powers could have also been viewed as part of a creative destruction process in which some parts of the state had to be revamped, like the judicial system, essentially from the beginning to clear out any corruption ingrained in the structure (Donais 2009; Knaus and Martin 2003).

Local Ownership in State-building Strategies

An interesting similarity that emerges between the cases is the existence of an all-powerful figure responsible for the state-building process. In Japan it was the SCAP, General Douglas MacArthur, who possessed the means to rule over the station of the Emperor and the Japanese Government to fulfill the Potsdam Declaration. While in Bosnia, the organization rather than a singular figure was the Office of the High Representative, but not until the Bonn Powers were introduced in late 1997.

The strategies of Japan and Bosnia diverged relating to focusing on functional or structural ownership. In Bosnia, the international community focused on functional ownership to lead to structural ownership. Evidence for functional ownership as the main policy is the first election in 1996, where the general political atmosphere of Bosnia did not meet the expectations to hold free elections, but were held anyway. The emphasis on functional ownership through the involvement of the local population led to the legitimization of war-time political parties. The

Bosnians took ownership of their elections, but not in the way that was prescribed by the international community.

Whereas in Japan, before the inaugural election was held, the emphasis was placed on the new Constitution and therefore structural ownership. Japan's focus on structural ownership is proved by the dominant powers of the SCAP from the inception of the Occupation in Japan. Working with Japanese elites before the first election demonstrated a focus on structural ownership, where the domestic actors themselves, even if not entirely representative of the population, had input on perhaps the most influential planning and strategic document to guide the state, the Constitution. While the exit strategies of most state-building projects include the handing over of responsibilities for both functional and structural ownership, in Japan and Bosnia the strategy of focusing on functional or structural ownership greatly affected the outcomes of the initial years of the state-building project.

After 1997 the OHR's shift away from functional ownership towards structural ownership align with the strategies employed with SCAP General MacArthur towards creating a product of a democratic, centralized state. The recalibration occurred because the premature emphasis on functional ownership from the beginning of the peace-building project led domestic actors to employ their divisive actions from war times. The international organizations largely served to keep peace, monitor implementation and set up the scaffolding of the state for the Bosnian people to operate within, but there was no clear leadership to guide the Bosnian people towards the specified outcomes of the international community. By emphasizing functional ownership early on in the state-building process, pre-existing ethno-nationalist parties were able

to take ownership of the political structures like elections and the government institutions to recreate the war-time political environment that had become habitual.

After the Bonn Powers were allocated to the OHR, the term ‘ownership,’ became more prominent in the taxonomy of state-builders, but the focus was shifted to building a centralized state operated by Bosnian domestic actors to comply with the EU Accession goals, rather than domestic actors simply living within the initial scaffolding of Dayton. The issue of local ownership and exit strategy was deterred in order to prioritize the construction and operation of the state.

III. Conclusion

Based on the success of Japan and the reorientation of the Bosnian state-building project, it seems that emphasizing structural ownership is a successful state-building strategy. The key question is based on when domestic actors can be trusted to enact and live by the international standards imposed from above. When is the structure of a state sturdy enough to foster democratic ideals and liberal principles without sewing division? When can the international community pack up their things and leave the governing to the locals for good? When can a target country be considered a success as a state-building project? When can they be considered an ally instead of a project?

While internationals maintain a powerful role within a target state in roles like SCAP or the OHR, there are going to be criticisms about colonial tactics. In violence prone areas, isn't peace preferred to war? Ed Joseph notes that in some societies domestic actors are simply unable to take over state functions without violence immediately after a war, and to some extent that was proven with the violent and hateful tactics still employed during the inaugural election in

Bosnia (Joseph 2007). If war is inevitable to some degree, would not the international community prefer pseudo-colonial tactics instead of lost lives and genocide? This reasoning leads to the conclusion that structural ownership is key, but first international interveners with strong powers must seek to replace old habits with new institutions and principles that align with liberal and democratic values. In the case of Japan, SCAP had ultimate power over the governance of Japan, and the Occupation emphasized the need for the removal of militaristic aspects and replacement with democratic mechanisms. Through the inclusion of domestic actors and staunch guidance from SCAP, Japan transitioned from a once militaristic state, to that of a functioning liberal democratic state.

Local ownership is important for states to function independently and effectively in the long run, but perhaps the lesson that the cases of Japan and Bosnia demonstrate is that new structures of governance and institutions have to be taught and domestic actors have to be partnered with rather than have rules and regulations imposed from above and given to domestic actors.

Chapter Six:

Conclusion

Throughout this thesis I have attempted to prove the connection between democratically written constitutions and structural ownership, and therefore more successful state-building outcomes. First, I explored the similarities and differences between the end of conflicts that led to state-building in Japan and Bosnia; then, I made comparisons between the constitution-making processes to isolate specific factors like the nature of the conflict and the actors involved. I concluded that the greatest difference between the two cases was the democratic and iterative constitution making process in Japan and the imposition of the new Constitution without local input in Bosnia, which was largely due to the context of the war ending. After this conclusion, I explored the content of the Constitutions, which demonstrated the salient principles the international community wished to impose. The constitutional content revealed how a democratic constitution-making process versus a non-democratic constitution-making process led to specific tenets in the Constitutions.

With these conclusions, I then investigated the inaugural elections and changes in state-building projects for both cases. In both cases, the inaugural elections included broad amounts of participation by domestic actors, but in Bosnia the ownership led to the recreation of a similar political environment that incited the ethno-nationalist conflict to begin with. Then, I connected this difference to the different aspects of local ownership: functional and structural ownership. I argued that Japan and Bosnia differed in their approaches to state-building as proved by their constitution-making processes: the IC in Japan emphasized structural ownership, while the IC in Bosnia emphasized functional ownership. The international community in Japan viewed structural ownership as the ultimate goal of the project, thereby including domestic actors in a

partnership with SCAP to democratically write and later enact a new Constitution. In the case of Bosnia, functional ownership was emphasized in hopes that increased contact between ethno-nationalist political groups would increase cooperation in building a state in the long-run. Yet, by emphasizing functional ownership as soon as possible without working with the population, since the Constitution was imposed from above, domestic actors reverted to the same divisive habits they were familiar with in the inaugural election.

The transitions in the state-building projects section demonstrated that the international community in Bosnia shifted its strategy, from that of emphasizing functional ownership immediately, which had largely proven unsuccessful, to structural ownership facilitated by building the state via the Bonn Powers allocated to the OHR. The roles of the SCAP and OHR were incredibly similar in that they were used to implement policies in order to build an efficient, democratic central state, and they had few restrictions on their powers.

Through focusing on structural ownership in the state-building project in Japan, the supreme powers of SCAP were used to efficiently demilitarize and democratize. The transition in the state-building project for Japan was largely due to the changing geopolitical atmosphere as the Cold War approached, but also to reign in the great powers SCAP controlled in order to officially hand ownership to the Japanese.

In summation, the cases prove that focusing on structural ownership, rather than functional ownership, led to the formation of the communication structure between international powers and the domestic population, that led to the outcomes in both constitution-making and the inaugural elections. The inaugural elections demonstrated the efficiency to which Japan grasped the international community's state-building tenets, and the extent to which Bosnia did

not, which led to the pivot in state-building strategy to match that of earlier Japan's. This pivot demonstrates the necessity to lead the state-building effort by focusing on local ownership as an end goal rather than a policy.

I. Alternative Explanations

There are a variety of alternative explanations than the one that I argued for in this work, all of which could be researched further. I will touch on the following alternative explanations for greater local ownership and an independently functioning Japan, and an often gridlocked dependent Bosnia: 1) pre-existing political conditions; 2) diversity of population; 3) strength of Constitution.

First, some scholars attribute the success of the state-building mission in Japan to the fact that it maintained a democratic structure and civil society before World War II (Dobbins 2003). The suggested difference is that Japan maintained a civil society in a way that most communist states could not. Therefore, rebuilding a democratic state and civil society was much easier because a similar structure had existed in the past

Second, Japan was composed of a largely homogenous population, and Bosnia had an incredibly heterogeneous and diverse population. There were no divides in the population of Japan beyond political beliefs and perhaps regional differences, whereas in Bosnia there was a variety of nationalities, ethnicities and religions that were politically mobilized against each other. Bosnia had a hurdle in their state-building project that Japan never could have had. The only thing close to division within Japanese society was the presence of extremely militant figures that mobilized the population under a united belief in Japanese superiority, but that was eradicated with the purge of militant figures throughout the country. There was no purge in

Bosnia of the same fashion, until perhaps the International Criminal Tribunal for Yugoslavia. Diversity of population is one of the greatest challenges for the Bosnian state-building project, and it does not have equal parallels in Japan.

Lastly, there is an argument to be made that the Bosnian Constitution was simply flawed in a way that makes cooperation among communities and consolidating a central state almost impossible. The Constitution legitimizes a division between the three political ethno-nationalist and reinforces the division in institutions and territory. A perfect Constitution cannot create a perfect state, but a flawed constitution leads to an uneven foundation for the rest of the state to be built upon. In Japan, the only conceivable parallel to the flawed constitution structure would be the War Clause or the Emperor becoming a symbolic rather than supreme figure, but these did not affect the operation of the governance structure as much as institutionalizing the nationalist parties did in the Bosnian Constitution.

Japan and Bosnia are not easily comparable in their histories or their state-building projects, but the opposite strategies pursued by state builders reveal some truths about success in state-building projects. Japan and Bosnia had similarities in their constitutions that had to do with building a liberal, democratic state, but the way they arrived at their final constitution differed. The ultimate pivot of the PIC and the powers of the OHR were the key mechanism that demonstrated the importance of focusing on building structural ownership. If the goal is to instill democratic values and structures into a society, it is clear that international interveners cannot simply gift a structure and a constitution, but need to seek a form of partnership or way to exchange ideas to build a state. One scholar suggests the best way forward in future state-building projects is to operate them as a cultural exchange, meaning that there is sharing of ideas

both ways rather than a hierarchal command structure (Donais 2009). Cultural exchange solves many of the issues that critics have concerning state-building violating norms of sovereignty. I would argue that Japan's democratic constitution-making process was a step in the right direction towards the strategy of cultural exchange, whereas the imposition of the constitution from above is opposite from cultural exchange, and rather is paternalistic and anti-democratic.

In a contradictory way, the imposition of supreme power over Japan by the SCAP immediately seems colonial and a violation of sovereignty, but ultimately the SCAP was able to relinquish power in a way that led to ownership by the Japanese people. The Constitution of Japan has not been amended since 1947, demonstrating ownership of the guiding document of the state. Additionally, Japan became an independent and functional state, so much so that Japan actually contributes money to the functioning of the OHR in Bosnia to this day. In Bosnia, the immediate allowance of domestic actors to operate within the democratic structures led to the democratic legitimization of nationalist parties, and not until more power was given to the OHR was the course corrected.

The argument for an initial strong force in state-building could sound like I am arguing for the allowance for a kind of 'benevolent dictatorship,' but I would like to make it clear that I do not believe in the long-term rule of a foreign leader in a country that is not their own. Yet, the necessity to end violence and build up state capacity, before offering structural ownership to domestic actors, is evident. No society can function without peace, or institutions for the production and management of public goods (Olson 1993). Therefore, an international arbiter could be essential to the rehabilitation of weak and failed states. As long as there is a dialogue present between the target state and the intervener about the plans and strategy of the mission, a

stable base of peace and basic institutions, perhaps can be built by foreign powers for the sake of establishing a foundation of state capacity. Perhaps an analogy will best capture this thinking. Suppose a friend or family member of yours undergoes knee surgery. They cannot get around easily and they are reliant on you and their physical therapist to supply meals and other basic needs, and support and training to ease into their new state of new knees. If they were to get out of surgery and immediately told to walk, they risk grave injury and pain. Yet, if you and their physical therapist continue to dote on them for too long, they may take advantage and walk rarely or not at all. The role you and the physical therapist serve is to provide support and guidance in teaching the person to operate independently. Just as a person cannot immediately operate on their own after surgery, neither can a state that undergoes damaging incidents of violence and war. State-builders play the role of the friend and/or physical therapist: they seek to teach how to operate in a new way with an end goal in mind that their patient will operate independently and should not be expected to, nor should they try to, manage their ‘patient’ forever.

I have spent the majority of this work arguing for the importance of maintaining a central focus on structural ownership, which leads to the adoption of acts like democratic constitution-making processes. Yet, it is important to note the most important difference between Japan and Bosnia was how their wars ended. The end of war created the array of possible strategies that the international community could take on to state-build. In the case of Japan, the country had suffered a clear loss and were the losers of the war, so the ability of the U.S. and IC to be so effective could be attributed to the fact the Japanese population had no good options for recourse. The Japanese population, to some extent, were at the will of the American occupation forces. Additionally, while more difficult to prove, the culture of deference in Japan could have also

contributed to the success of imposing international standards from above. Even in the Japanese language, there is a large emphasis on hierarchy and respect, and as mentioned earlier in the pre-war period Japanese citizens were expected to bow to places of importance in Shinto, these cultural standards also could have led to the ease of international ideals being imposed. Whereas, in the Bosnian case, there was no true winner, nor loser, and therefore the communities involved had more options to push back against the impositions from the IC. The peace that was established at Dayton was done by the highest levels of leaders without much, if any involvement from the general populace, which could mean there was a difference between the compromises made in Dayton from the needs or wants from the communities on the ground. All this to say, the way the wars ended greatly affected the strategies the IC could utilize to state-build, and could have been the determining factor to lead to centering structural ownership and therefore the democratic constitution-making processes.

All in all, if there are to be more state-building exercises in the future, it is important to center structural ownership, and bring domestic actors into the planning process of state-building in order to come closer to cultural exchange. These cases show the immediate participation of domestic actors via emphasizing functional ownership is not always ideal, and could lead to cementing past belief systems and relationship networks within the new democratic system. While both Japan and Bosnia had policies and internationalized Constitutions imposed from above, it was seeking to create structural ownership that was most successful in building a state between these two cases.

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